

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

<b>Illinois Commerce Commission</b>	:	
<b>On Its Own Motion</b>	:	
	:	
<b>Investigation concerning Illinois Bell</b>	:	<b>Docket No. 01-0662</b>
<b>Telephone Company's compliance</b>	:	
<b>with Section 271 of the</b>	:	
<b>Telecommunications Act of 1996</b>	:	

**PHASE II –**  
**DRAFT INTERIM ORDER ON INVESTIGATION**  
**BY THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**

Sean R. Brady  
Carmen L. Fosco  
Matthew L. Harvey  
David L. Nixon  
Office of General Counsel  
Illinois Commerce Commission  
160 North LaSalle Street  
Suite C-800  
Chicago, Illinois 60601  
(312) 793-2877

March 25, 2002

*Counsel for the Staff of the  
Illinois Commerce Commission*

## TABLE OF CONTENTS

I.	Introduction .....	4
II.	Phase II Procedural History .....	5
III.	Scope and Outline of the Phase II Interim Order .....	6
IV.	The “Competitive Checklist” Items Section 271(C)(2)(b) .....	7
	A. Standard of Review for Performance Measurements .....	7
	B. SBC Illinois’ Performance Measurements .....	9
	1. Summary of Staff’s Performance Measurement Data Analysis.....	9
	a) Staff Reply to SBC Illinois’ PM Response.....	12
	2. Staff’s Approach to Analyzing Performance Measurement Data.....	13
	a) Staff’s Reply To SBC Illinois Response .....	16
	3. Accuracy And Reliability Of SBC Illinois’ Performance Measurement Data .....	18
	a) Background.....	18
	b) Staff’s Position .....	18
	c) BearingPoint December 20, 2003 Performance Measurement Report.....	20
	d) Ernst & Young Performance Measurement Examination.....	28
	e) SBC Illinois Additional Assurances of Reliability are not Sufficient .....	38
	f) Commission Analysis And Conclusion.....	39
V.	Checklist Item 1 – Interconnection/Collocation .....	40
	A. Phase I Compliance Issues .....	40
	1. Collocation .....	40
	2. Commission Analysis And Conclusion .....	41
	B. Performance Measurement Data Analysis .....	41
	1. Interconnection Trunks.....	41
	a) Maintenance and Repair – Analysis And Recommendation .....	42
	b) Interconnection Trunk Performance.....	42
	(1) Staff’s Initial Position .....	42
	(2) Staff Reply Position .....	42
	2. Collocation .....	43
VI.	Checklist Item 2 - Access to Network Elements - OSS.....	44

A. Phase I Compliance: .....	44
1. Line Loss Notifications .....	44
a) Staff’s Initial Position.....	44
b) Staff’s Reply Position .....	47
c) Commission Analysis And Conclusion.....	50
2. Tariff and Interconnection Agreement Opt-In .....	51
a) Staff’s Initial Position.....	51
(1) Commission Ordered Action.....	51
(2) Company Compliance Filing.....	51
(3) Analysis and Recommendation .....	52
b) Staff’s Reply Position .....	53
(1) Analysis of Company’s Response .....	53
(2) Staff’s Recommendation .....	53
c) Commission Analysis And Conclusion.....	53
3. EEL Performance Measurement.....	54
a) Staff’s Initial Position.....	54
(1) Commission Ordered Action.....	54
(2) Company Compliance Filing.....	54
(3) Analysis and Recommendation .....	55
b) Staff’s Reply Position .....	56
(1) Analysis of Company’s Response .....	56
(2) Staff’s Recommendation .....	56
c) Commission Analysis and Conclusion .....	56
4. EEL and UNE-P Rate Clarity.....	57
a) Staff’s Initial Position.....	57
(1) Commission Ordered Action.....	57
(2) Company Compliance Filing.....	57
(3) Analysis and Recommendation .....	58
b) Staff’s Reply Position .....	59
(1) Analysis of Company’s Response .....	59
(2) Staff’s Recommendation .....	59
c) Commission Analysis And Conclusion.....	59
5. EEL and UNE-P Rate Reasonableness .....	60

a) Commission Ordered Action .....	60
b) Company Compliance Filing .....	60
c) Staff's Analysis and Recommendation.....	61
d) Commission Analysis And Conclusion.....	62
6. Other Zone Of Reasonableness Requirements .....	62
a) Staff's Initial Position.....	62
b) Staff's Reply Position .....	64
7. Unbundled Local Switching Rates.....	64
8. Dark Fiber Rates .....	65
a) Staff's Initial Position.....	65
b) Staff's Reply Position .....	65
9. Commission Analysis And Conclusion .....	66
10. Sub-Loop Rates .....	67
a) Staff's Initial Position.....	67
b) Staff's Reply Position .....	68
c) Commission Analysis And Conclusion.....	69
11. Broadband Services Rates.....	69
12. OSS Modification Charge – Checklist Item IV .....	69
13. AIN Database Query Rates – Checklist Item VII .....	69
14. CNAM Database Query – Checklist Item X.....	70
a) Staff's Initial Position.....	70
b) Staff's Reply Position .....	70
c) Commission Analysis And Conclusion.....	70
15. True-up Language.....	71
a) Staff's Initial Position.....	71
b) Staff's Reply Position .....	71
16. Staff's Conclusion Regarding Rates.....	71
B. Access to Operations Support Systems .....	72
1. Independent Third Party Review of SBC Illinois' Operational Support Systems .....	72
a) Background.....	72
b) Staff's Initial Position.....	74
c) Staff's Reply Position .....	79

2. Other Operational Concerns of the CLECs .....	82
3. Commission Analysis And Conclusion .....	84
C. Performance Measurement Data Analysis .....	85
a) Pre-Ordering .....	86
b) Ordering.....	88
(1) Resolution of Problems with Key PM 5 — Percent Firm Order Confirmation Returned within X Hours .....	90
(2) Problems with Key PM 7— Percent Mechanized Completion Returned within One Day .....	91
(3) Problems with Key PM 10 — Percent of Manual and Mechanized Rejects .....	92
(4) Resolution of Problems with Key PM 11.1 — Mean time to return manual rejects received via an electronic interface.....	92
(5) Problems with Key PM 13 -- Percent of Orders from Receipt to Distribution that Progress Mechanically through to the Company Provisioning Systems (i.e “flow through”). .....	93
c) Provisioning Accuracy.....	94
(1) Problems with Key PM MI-2 — Percent of Orders Given Jeopardy Notices within 24 Hours of the Due Date .....	95
(2) Problems with Key PM MI-14 — Percent of Completion Notifications Returned within “X” Hours of Completion of Maintenance.....	96
d) Billing .....	96
(1) Problems with Key PM 17— Percent of On-time Service Orders in Both ACIS and CABS that Post within a 30-Day Billing Cycle .....	96
(a) Staff’s Initial Position .....	97
(b) Staff’s Reply Position .....	98
(c) Commission Analysis And Conclusion .....	98
e) Staff Recommendation for Checklist Item 2 PM Data.....	99
(1) Staff’s Initial Position .....	99
(2) Staff’s Reply Position.....	99
(3) Commission Analysis And Conclusion .....	100
VII. Checklist Item 3 - Access to Poles, Ducts, Conduits, and Rights of Way .....	100
A. Performance Measurement Data Analysis .....	100
1. Staff’s Initial Position .....	101
2. Staff’s Reply Position .....	101

VIII. Checklist Item 4 - Unbundled Local Loops .....	101
A. Performance Measurement Data Analysis .....	101
a) Unbundled Stand-Alone DSL Loops .....	102
(1) Problems with Key PM C WI-6 — Percent Form A Received with the Interval Ordered by the Commission.....	102
(2) Staff's Initial Position .....	102
(a) Installation Timeliness.....	102
(b) Installation Quality.....	104
(c) Maintenance and Repair Service .....	104
(d) FMOD Service.....	105
(e) Staff Recommendation.....	106
(3) Staff's Reply Position.....	106
(a) FMOD Form A Responses.....	106
(b) Staff Recommendation.....	107
(4) Commission Analysis And Conclusion .....	107
b) Unbundled DSL Loops With Linesharing .....	108
(1) Staff's Initial Position .....	108
(a) Installation Timeliness.....	108
(b) Installation Quality.....	109
(c) Maintenance and Repair .....	109
(d) FMOD Service.....	111
(e) Staff's Recommendation .....	111
(2) Staff's Reply Position.....	112
(a) Analysis of Company Response Regarding Installation Quality and Repair and Maintenance .....	112
(b) Staff's Recommendation .....	113
(3) Commission Analysis And Conclusion .....	114
c) Unbundled Voice Grade Loops.....	114
(1) Problems with Key PM 55 — Average Installation Interval for N, T and C Orders.....	114
(2) Staff's Initial Position .....	115
(a) Installation Timeliness.....	115
(b) Installation Quality.....	117

(c) Maintenance and Repair .....	117
(d) FMOD Service.....	117
(e) Staff's Recommendation .....	118
(3) Staff's Reply Position.....	119
(a) Analysis of Company Response Regarding Installation Timing .....	119
(b) Staff's Recommendation .....	119
(4) Commission Analysis And Conclusion .....	120
d) Unbundled BRI (digital) Loops .....	120
(1) Staff's Initial Position .....	120
(a) Installation Timeliness .....	120
(b) Installation Quality .....	121
(c) Maintenance and Repair .....	121
(d) FMOD Service.....	122
(e) Staff's Recommendation .....	123
(2) Staff's Reply Position.....	123
e) Unbundled DS1 Loops.....	123
(1) Staff's Initial Position .....	124
(a) Installation Timeliness .....	124
(b) Installation Quality .....	125
(c) Maintenance and Repair .....	125
(d) FMOD Service.....	125
(e) Staff's Recommendation .....	126
(2) Staff's Reply Position.....	127
(a) Analysis of Company's Response Regarding Unbundled Voice Grade Loops/Unbundled BRI (digital) Loops/ Unbundled DS1 Loops – FMOD Due Dates.....	127
(b) Staff's Recommendation .....	127
B. Compliance Issues .....	127
1. Docket No. 00-0393 Compliance .....	127
a) Staff's Initial Position.....	127
b) Staff's Reply Position .....	133
2. Line Splitting – Single Order Process.....	133

a) Staff's Initial Position.....	133
b) Staff Reply Position.....	134
3. Line Splitting and Non-Discrimination.....	134
a) Commission Analysis And Conclusion.....	138
4. Compliance with the Commission's Order in Docket No. 01-0614 .....	138
a) Staff's Initial Position.....	138
b) Staff's Reply Position .....	140
c) Commission Analysis And Conclusion .....	142
IX. Checklist Item 5 - Unbundled Local Transport.....	142
A. Performance Measurement Data Analysis .....	142
1. Unbundled DS1 Dedicated Transport.....	142
a) Staff's Initial Position.....	143
(1) Maintenance and Repair .....	143
(2) Staff's Recommendation .....	143
2. Unbundled DS3 Dedicated Transport.....	143
a) Staff's Initial Position.....	143
(1) Maintenance and Repair .....	143
(2) Staff's Recommendation .....	143
X. Checklist Item 6 – Unbundled Local Switching .....	144
A. Performance Measurement Data Analysis .....	144
XI. Checklist Item 7 - 911, E-911, Directory Assistance, and Operator Services .....	144
A. Performance Measurement Data Analysis .....	144
1. 911 and E-911.....	144
a) Problems with Key PM 104 — Average Time Required to Update 911 Database (facilities based carrier).....	145
b) Commission Analysis And Conclusion.....	148
2. Directory Assistance and Operator Services.....	148
3. Staff Recommendation for Checklist Item 7 PM Data .....	150
XII. Checklist Item 8 – White Pages Directory.....	150
A. Performance Measurement Data Analysis .....	150
XIII. Checklist Item 9 - Access to Telephone Numbers .....	151
A. Performance Measurement Data Analysis .....	151



XIV. Checklist Item 10 – Nondiscriminatory Access to Databases and Associated Signaling Necessary For Call Routing and Completion .....	152
A. Performance Measurement Data Analysis .....	152
1. Staff’s Initial Position .....	152
2. Staff’s Reply Position .....	152
XV. Checklist Item 11 - Number Portability.....	153
A. Performance Measurement Data Analysis .....	153
XVI. Checklist Item 12 – Dialing Parity .....	155
A. Performance Measurement Data Analysis .....	155
XVII. Checklist Item 13 – Reciprocal Compensation .....	155
A. Performance Measurement Data Analysis .....	155
XVIII. Checklist Item 14 – Resale.....	155
A. Performance Measurement Data Analysis .....	155
1. Resolution of Problems with Key PM 29 – Percent of N, T, and C Orders Where Installation Was Not Completed as a Result of Company Caused Missed Due Date. ....	156
2. Resolution of Problems with Key PM 35 – Percent Trouble Reports within 30 Days of Installation.....	156
3. Problems with Key PM 37—Number of Trouble Reports per 100 Lines.....	156
4. Commission Analysis And Conclusion .....	157
XIX. Review of Performance Reporting and Enforcement Mechanisms.....	158
A. Summary of Staff’s Position .....	158
B. Scope of Review.....	159
C. Burden of Proof - Assurance of Future Compliance .....	160
D. Burden of Proof – Changes to the Commission’s Approved Plan.....	160
E. Key Elements of an Assurance Plan .....	161
F. Performance Assurance Plans .....	162
1. SBC Illinois’ Remedy Plan.....	162
a) Ability to Detect and Sanction Poor Performance .....	162
(1) Absence of Measurement Weightings .....	163
(2) Index Value .....	164
(3) “Ceilings and Floors” .....	166
(4) Gap Closure Proposal .....	167
b) Self-Executing Mechanism .....	168

c) Total Liability at Risk .....	169
d) Data Validation and Audit Procedures .....	170
(1) Data Validation .....	170
(2) Audits .....	172
2. Remedy Plan Approved in Docket 01-0120 .....	173
a) Total Liability at Risk .....	173
b) Performance Measurements and Standards .....	174
c) Structure That Detects and Sanctions Poor Performance .....	175
d) Self-executing Mechanism.....	175
e) Data Validation and Audit Procedures .....	176
3. Staff Proposed Hybrid Performance Remedy Plan .....	176
a) Total Liability at Risk .....	177
b) Ability to Detect and Sanction Poor Performance .....	179
c) Self-Executing Mechanism .....	180
4. 36 Month Review .....	180
5. Commitments by SBCI Illinois Regarding Operations of Remedy Plans in Illinois .....	181
a) Auditing.....	181
(1) Mini-audits .....	182
(2) Annual audits.....	183
(3) Regional Audits .....	184
b) Six Month Collaborative .....	184
c) Applicable Remedy Plans in Illinois on a Going Forward Basis .....	185
d) Opt-In.....	187
e) Tier 2 Payments for All Carriers.....	189
f) Annual Threshold Amounts.....	192
6. Commission-Ordered Remedy Plan Continued as Part of SBCI's Alternative Regulation Plan .....	193
7. Commission Analysis and Conclusion Regarding Performance Reporting and Enforcement Mechanisms .....	196
XX. Disputes Driven by State Law.....	199
A. Dispute 2 - "All Equipment List" or AEL .....	199
1. Staff Position .....	199

2. Commission Analysis And Conclusion .....	200
XXI. Performance Measure Six-Month Collaborative Disputes .....	200
XXII. Commission Findings and Ordering Paragraphs on the Phase II Investigation .....	202

### Table of Short Form Citations

SHORT FORM CITATION USED IN BRIEF	FULL CITATION
<b>FCC Orders Under Section 271</b>	
<u>AR/MO Order</u>	<u>In re Joint Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in Arkansas and Missouri</u> , 16 F.C.C. Rcd. 20719 (2001)
<u>BellSouth Five-State 271 Order</u>	<u>In re Joint Application by BellSouth Corporation et al. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina</u> , 17 F.C.C. Rcd. 17595 (2002)
<u>California Order</u>	<u>In re Application by SBC Communications Inc., et al. for Authorization to Provide In-Region, InterLATA Services in California</u> , WC NO. 02-306, 2002 WL 31842456 (F.C.C., Dec 19, 2002)
<u>Connecticut Order</u>	<u>Application of Verizon New York Inc. et. al. for Authorization to Provide In-Region, InterLATA Services in Connecticut</u> , 16 F.C.C. Rcd. 14147 (2001)
<u>GA/LA Order</u>	<u>In re Joint Application by Bellsouth Corp. et al. for Provision of In-Region, InterLATA Services in Georgia and Louisiana</u> , 17 F.C.C. Rcd. 9018 (2002)
<u>KS/OK Order</u>	<u>In re Joint Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma</u> , 16 F.C.C. Rcd. 6237 (2001)
<u>Maine Order</u>	<u>In re Application by Verizon New England Inc., et al. for Authorization to Provide In-Region, InterLATA Services in Maine</u> , CC Docket No. 02-61, 2002 WL 1339069 (rel. June 19, 2002)
<u>Massachusetts Order</u>	<u>In re Application of Verizon New England Inc., et al. for Authorization to Provide In-Region, InterLATA Services in Massachusetts</u> , 16 F.C.C. Rcd. 8988 (2001)

SHORT FORM CITATION USED IN BRIEF	FULL CITATION
<b>FCC Orders Under Section 271 (continued)</b>	
<u>Michigan Order</u>	<u>Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan</u> , 12 F.C.C. Rcd. 20543 (1997)
<u>New Jersey Order</u>	<u>In re Application by Verizon New Jersey Inc., et al. for Authorization to Provide In-Region, InterLATA Services in New Jersey</u> , WC Docket No. 02-67, 2002 WL 1363263 (rel. June 24, 2002)
<u>New York Order</u>	<u>In re Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York</u> , 15 F.C.C. Rcd. 75 (1999)
<u>Pennsylvania Order</u>	<u>In re Application of Verizon Pennsylvania Inc., et al. for Provision of In-Region, InterLATA Services in Pennsylvania</u> , 16 F.C.C. Rcd. 17,419 (2001)
<u>Qwest Nine-State 271 Order</u>	<u>In re Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington And Wyoming</u> , WC NO. 02-314, 2002 WL 31863801 (F.C.C., Dec 23, 2002)
<u>Rhode Island Order</u>	<u>In re Application of Verizon New England Inc., et al. for Authorization to Provide In-Region, InterLATA Services in Rhode Island</u> , 17 F.C.C. Rcd. 3300 (2002)
<u>Second Louisiana Order</u>	<u>Application of BellSouth Corp., et al., for Provision of In-Region, InterLATA Services in Louisiana</u> , 13 F.C.C. Rcd. 20599 (1998)
<u>South Carolina Order</u>	<u>Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina</u> , 13 F.C.C. Rcd. 539 (1997)
<u>Texas Order</u>	<u>In re Application by SBC Communications Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas</u> , 15 F.C.C. Rcd. 18354 (2000)

SHORT FORM CITATION USED IN BRIEF	FULL CITATION
FCC Orders Under Section 271 (continued)	
<u>Vermont Order</u>	<u>In re Application by Verizon New England Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Vermont</u> , 17 F.C.C. Rcd. 7625 (2002)

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

<b>Illinois Commerce Commission</b>	:	
<b>On Its Own Motion</b>	:	
	:	
<b>Investigation concerning Illinois Bell</b>	:	<b>Docket No. 01-0662</b>
<b>Telephone Company's compliance</b>	:	
<b>with Section 271 of the</b>	:	
<b>Telecommunications Act of 1996</b>	:	

**PHASE II –**  
**DRAFT INTERIM ORDER ON INVESTIGATION**  
**BY THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**

By the Commission:

**I. Introduction**

Section 271 (d)(1) of the Telecommunications Act of 1996 (“Act”) provides SBC Illinois (“SBCI”, “the Company”, “Ameritech” or “SBC-Illinois”) with the opportunity to apply to the Federal Communications Commission (“FCC”) for authority to provide in-region interLATA service in Illinois. 47 U.S.C. Section 271(d)(1). Before making a determination on any Section 271 application, however, the FCC is required to consult with the Department of Justice. 47 U.S.C. Section 271 (d)(2)(A). Further, it is required to consult with the relevant state commission in order to verify that the BOC has one or more state-approved interconnection agreements with a facilities-based competitor, or a Statement of Generally Available Terms and Conditions, and that either the agreement(s) or the general statement, satisfy the Act’s “competitive checklist” as set out in Section 271(c). 47 U.S.C. Section 271(d)(2)(A).

On October 24, 2001, the Illinois Commerce Commission (“Commission”) entered an order, initiating this docketed proceeding to investigate the status of SBCI’s compliance with Section 271 of the Act, to hold hearings thereon, and to develop a comprehensive factual record for purposes of its anticipated consultation with the FCC. (“Initiating Order”). Given the importance of SBCI’s compliance with the “competitive checklist” to ensuring that its markets are open to effective competition, the Commission would examine whether the Company currently satisfies these items or whether further action is required. (*Id.* at 3). Along therewith, the Commission indicated that it will work with SBCI, the CLECs, Staff and other interested parties to bring about any necessary changes or improvements.

The Initiating Order further outlined the process to be followed in these premises. At the outset, the Commission made SBCI (the only BOC serving Illinois customers) a party to this proceeding. It further directed that all carriers, granted certificates of Exchange Service Authority pursuant to Section 13-405 of the PUA, be provided notice of the instant proceeding.

Recognizing the enormity, complexity and expanse of this task, the Commission considered it appropriate to deal with the matters at hand in the process of several separate phases. Pursuant to the directives of the Initiating Order, the “first phase shall cover as much of the competitive checklist as possible absent OSS test results” and the “second phase shall cover all remaining OSS issues and any other relevant issues that were not addressed in the first phase.” (*Id.* at 3). It further granted the ALJ authority to provide additional interim orders when beneficial to do so.

This order reflects Commission’s decisions regarding the issues addressed in the second phase of its investigation. The first phase of review has been completed and an order issued on February 6, 2003.

## **II. Phase II Procedural History**

Due notice of this proceeding was served pursuant to the Commission’s directives. The first of several status hearings, administered by the ALJ, was held on January 14, 2003 at the Commission’s offices in Chicago, Illinois. Thereafter, on January 29, 2003, a schedule for the Phase IA proceeding was established.

The hearing was conducted as panel workshops, and were overseen by ALJ Moran and a facilitator hired by SBCI, Mr. John Kerns. The panel workshops were held instead of the typical hearing. The panel workshops were conducted on February 5, 10, 11, 12, 13 and 14, 2003, at which time the parties allowed to ask questions of SBCI’s affiants, BearingPoint personnel and Ernst & Young personnel. Between the dates of February 21, 2002 and March 25, 2003, the parties circulated direct/rebuttal/surrebuttal affidavits and comments in place of testimony and briefs. These affidavits and comments addressed Phase I Compliance issues, access to SBCI’s operation support systems, performance measurement data related issues, and performance assurance plan related issues. The witnesses providing verified affidavits/comments in the Phase II proceeding are as follows:

For Ameritech Illinois: Justin W. Brown; Carol A. Chapman; William C. Deere; James D. Ehr; Patricia K. Fleck; Michael Silver; Karl Wardin; John Muhs; Mark J. Cottrell; Scott J. Alexander.

For WorldCom: Karen Kinard; and Sherry Lichtenberg.

For AT&T: Timothy M. Connolly; Walter W. Willard; Sarah DeYoung; James F. Henson; Michael Kalb.

For Staff: Jeff Hoagg; Samuel S. McClerren; Genio Staranczak; Robert F. Koch; James Zolnieriek; Marci Schroll; Mark A. Hanson; George Light; Russell W. Murray; Olusanjo A. Omoniye; Nancy B. Weber; Melanie Patrick.



For McLeodUSA/TDS: Rod Cox.

For CIMCO: Bill Dvorak.

For Forte Communications, Inc.: Tom Waterloo

The testimony of each of the above named witnesses was admitted into the record.

Comments for Phase II were filed by SBC Illinois, Forte Communications, Cimco, AT&T, McLeodUSA/TDS, Staff, and Z-Tel.

The ALJ issued a Proposed Interim Order for the Phase IA Investigation on April 8, 2003. Thereafter, Briefs on Exceptions were filed by Staff, SBCI, AT&T, WorldCom, Z-Tel, CIMCO, Forte and McLeodUSA/TDS Metrocom. All of the arguments set out in those briefs were considered and inform the instant Order.

### **III. Scope and Outline of the Phase II Interim Order**

In accord with the Initiating Order's direction, this Phase II interim order covers the remaining issues not addressed in Phase I. Those issues include Phase I compliance issues, access to operations support systems, analysis of performance measurement data, and analysis of performance assurance plans.

In this investigation, it is incumbent upon SBCI to demonstrate compliance with the detailed requirements of the Section 271 checklist and the implementing orders of the FCC and this Commission. This was made clear by the Initiating Order's pronouncement that AI bears the burden of proof in this proceeding and that it is to be the first to file testimony. The FCC has similarly emphasized that the 271 applicant bears the burden of showing compliance even if no party challenges its compliance with a particular requirement. Thus, in each of the particulars, SBCI needs to establish the requisite prima facie showing.

By the same token, Staff and the other interested parties have the burden of clearly stating and supporting their respective issues and positions. This investigation is a fact-driven inquiry, such that mere arguments or conclusory assertions do not suffice. This Commission, likewise, should not be put to the burden of ferreting out issues or positions that are not set out clearly.

All total, the Commission has been intent on collecting, recording and evaluating necessary and relevant information in order to present a credible and comprehensive consultative report to the FCC. The massive record before us bears testament to the success of our efforts as does the breadth of the instant order. As broad as this proceeding might be, however, it has certain limitations. We are examining information to assess SBCI's compliance with existing obligations – not to entertain novel issues or reconsider settled decisions or to impose new obligations. The latter would be most inappropriate given that this proceeding is not set up to adjudicate the rights of any parties. In the same vein, we are not in any position to excuse SBCI from any of its existing obligations.

The instant Phase II Interim Order is organized as follows:

In Part I, we examine the actions SBCI has taken to come into compliance with the issues determined to be outstanding in Phase I.

In Part II, we examine the manner and degree to which SBCI provides access to operations support systems.

In Part III, we review SBCI's performance measurement data.

In Part IV, the Commission examines the Public Interest positions of all the interested parties as it relates to performance assurance plans.

It is our intent, as near as possible, to address the issues and positions relative to state matters separate from federal concerns. In this way, the Commission is fully informed as to all aspects of compliance, yet able to maintain a clear perspective when consulting with the FCC on the Section 271(c) obligations.

Overall, and to the extent that the Commission considers certain remedial action by Ameritech is required for Section 271 compliance, the Company will have the option to:

1. accept the remedial action and prove compliance therewith in Phase II.
2. ignore the remedial action and risk an adverse recommendation.
3. dispute the need for the particular remedial action in Phase II or at an earlier stage to be agreed upon (or through its Brief on Exceptions if further evidence is not required).

The main focus, here and now, is to supplement the findings of Phase I interim order, and determine SBCI's compliance with Section 271 requirements as they have been set out in the federal Act, and as described, implemented and addressed by the FCC. This constitutes our standard for review. We believe it critical to establish just what compliance is. In looking to the dictionary definitions, we see that:

To comply is to act in accordance with another's command, request, rule, or wish. American Heritage Dictionary.

To yield; to accommodate, or to adapt oneself to; to act in accordance with; to accept. Black's Law Dictionary

We trust that all parties have proceeded to address the issues of Section 271 compliance on this basis.

#### **IV. The "Competitive Checklist" Items Section 271(C)(2)(b)**

##### **A. Standard of Review for Performance Measurements**

The BOC applicant retains, at all times, the ultimate burden of proof that its application satisfies all of the requirements of section 271, even if no party files

comments challenging its compliance with a particular requirement. New York Order ¶47. SBCI needs only prove each element by a preponderance of the evidence, which generally means “the greater weight of evidence, evidence which is more convincing than the evidence which is offered in opposition.” New York Order ¶48. SBCI must provide proof of policies, procedures, or capabilities that preclude it from satisfying the requirements of the checklist item. Mere unsupported evidence in opposition will not suffice.<sup>1</sup> Although anecdotal evidence may be indicative of systemic failures, isolated incidents may not be sufficient for a commenter to overcome a BOC’s prima facie case. Moreover, a BOC may overcome such anecdotal evidence by, for example, providing objective performance data that demonstrate that it satisfies the statutory nondiscrimination requirement. New York Order ¶50. The particular showing required to demonstrate compliance will vary depending on the individual checklist item and the circumstances of the application. New York Order ¶53.

A disparity in performance for one measure, by itself, may not provide a basis for finding noncompliance with the complete checklist. The FCC “will not withhold section 271 authorization on the basis of isolated instances of allegedly unfair dealing or discrimination under the Act.”<sup>2</sup> The FCC looks for a pattern of conduct by the BOC that would undermine its confidence that a BOC’s market is open to competition. Connecticut Order ¶75. This is not to say, however, that performance discrepancies on a single performance metric are unimportant. Indeed, under certain circumstances, disparity with respect to one performance measurement may support a finding of statutory noncompliance, particularly if the disparity is substantial or has endured for a long time, or if it is accompanied by other evidence of discriminatory conduct or evidence that competing carriers have been denied a meaningful opportunity to compete. The review must be on the totality of the circumstances, including the origin and quality of the information presented, to determine whether the nondiscriminatory requirements of the Act are met. New York Order ¶46. The Commission may also find that the performance data reported by SBCI is affected by factors beyond a it’s control, a finding that would make the Commission less likely to hold the SBCI wholly accountable for the disparity. Connecticut 271 Order, Appendix D ¶9.

In past orders the FCC has reviewed the BOCs performance measurement data to determine if it is providing nondiscriminatory access to unbundled network elements to requesting carriers.<sup>3</sup> Performance measurements (“PMs”) are valuable evidence with which to inform a judgment as to whether a BOC has complied with the checklist requirements. Connecticut Order, Appendix D ¶10. The most probative evidence that a BOC can provide of nondiscriminatory access is evidence of actual commercial usage.<sup>4</sup> The performance measurement data is an especially effective means of providing the evidence of the quality and timeliness of the access provided by a BOC to requesting

---

<sup>1</sup> See Michigan Order, 12 FCC Rcd at 20569 (concluding that greater weight will be attached to comments and pleadings supported by an affidavit or sworn statement than to an unsupported contrary pleading).

<sup>2</sup> Texas Order, ¶431 (*citing* Michigan Order, ¶396).

<sup>3</sup> See, e.g., Second BellSouth Louisiana Order, 13 FCC Rcd at 20658-59; First Louisiana Order, 13 FCC Rcd 6245, 6258-81; South Carolina Order, 13 FCC Rcd 539, 597-634; Michigan Order, 12 FCC Rcd at 20627-52.

<sup>4</sup> Second Louisiana Order, 13 FCC Rcd at 20655; Michigan Order, 12 FCC Rcd at 20618.

carriers. New York Order ¶53. Although performance measurements add necessary objectivity and predictability to the review, they cannot wholly replace the Commission's own judgment as to whether a BOC has complied with the competitive checklist. PMs are not substitutes for the 14-point competitive checklist, but supplement the review of that checklist. Connecticut Order, Appendix D ¶10.

In this review, SBCI is relying upon findings from Michigan. While the Commission's review may be informed by prior findings, the Commission will consider all relevant evidence in the record, including state-specific factors identified by commenting parties, the states. Where SBCI seeks to rely on findings made in a prior, successful section 271 application (the "anchor" state), then, our analysis will always start with actual performance towards competitors in the Illinois, the applicant state. Evidence of satisfactory performance in another state cannot trump convincing evidence that an applicant fails to provide nondiscriminatory access to a network element in the applicant state. Connecticut Order, Appendix D ¶13.

The Commission must independently evaluate whether SBCI is fulfilling the nondiscrimination requirements of section 271. Nevertheless, the FCC will examine whether a state commission has adopted a retail analogue or a benchmark to measure BOC performance and then review the particular level of performance the state has required. If the state commission has made these determinations in the type of rigorous collaborative proceeding described above, the FCC is much more likely to find that they are reasonable and appropriate measures of parity. Accordingly, the FCC is inclined to rely on such standards and measurements in its own analysis but may reach a different conclusion where justified. New York Order ¶56.

## **B. SBC Illinois' Performance Measurements**

### **1. Summary of Staff's Performance Measurement Data Analysis**

SBC Illinois has not yet adequately demonstrated that it provides wholesale service to CLECs in a non-discriminatory manner. Therefore, SBC Illinois should not be provided a positive 271 recommendation from the ICC to the Federal Communications Commission ("FCC").

In the alternative, if the Commission elects to provide a positive recommendation to the FCC, regardless of SBC Illinois' failure to meet key PMs, then the Commission should (1) require the company to identify the steps it will take to remedy its current unsatisfactory PM performance (2) and require the Company to demonstrate substantially improved performance by November 2003 or face additional penalties.

Following is a table of PMs for which SBC Illinois has not attained satisfactory performance, and are important to the competitive telecommunications environment in Illinois. The table contains the PM number, the PM description, and the affidavit in which more information about the PM is included:

<b>SBC Illinois'</b> <b>Key PM's Requiring Improvement</b>			
<b>PM</b>	<b>PM Description</b>	<b>ICC Staff</b>	<b>Checklist</b>
<b>Number</b>		<b>Exh.</b> <b>Citations</b>	<b>Item #</b>
7.1	Percent mechanized completions returned within one day	31 & 43	2
10.1	Percent mechanized rejects returned within one hour.	31 & 43	2
10.2	Percent manual rejects received electronically and returned with 5 hrs	31 & 43	2
10.3	Percent manual rejects received manually and returned with 5 hrs	31 & 43	2
13	Percent of orders from receipt to distribution that progress mechanically through to the company provisioning systems(flow through).	31 & 43	2
17	Percent of on-time service orders in both ACIS and CABS that post within a 30-day billing cycle	30 & 42	2
37	The number of trouble reports per 100 lines	29 & 41	14
55	Average Installation Interval for N,T and C orders	32 & 44	4
59	Percent network trouble reports within 30 days of installation	32 & 44	4
65	Trouble Report Rate per 100 UNEs	32 & 44	4
65.1	Trouble Report Rate Net of Installation & Repeat Reports	32 & 44	4
66	Percent Missed Repair Commitments	32 & 44	4
67	Mean Time to Restore	32 & 44	4
104	Average time required to update 911 database (facilities based carrier)	36 & 48	7
MI-2	Percent of orders given jeopardy notices within 24 hours of the due date	29 & 41	2
MI-14	Percent completion notifications returned within "X" hours of completion of maintenance	29 & 41	2
C WI-6	Percent form A received with the interval ordered by the Commission	32 & 44	4

The following is the Commission's assessment of each of the 14-point checklist items relative to PM performance. Overall, the evidence and the three months of PM data indicate that SBCI does not provide non-discriminatory access to checklist items 2, 4, 7, and 14.

Staff's 14-Point Checklist Assessment	
Checklist Item 1 – Interconnection/Collocation	Pass
Checklist Item 2 - Access to Network Elements - OSS	Fail
Checklist Item 3 - Access to Poles, Ducts, Conduits, and Rights of Way	Pass
Checklist Item 4 - Unbundled Local Loops	Fail
Checklist Item 5 - Unbundled Local Transport	Pass
Checklist Item 6 - Unbundled Local Switching	Pass
Checklist Item 7 - 911, E-911, Directory Assistance, and Operator Services	Fail
Checklist Item 8 – White Pages Directory	Pass
Checklist Item 9 - Access to Telephone Numbers	Pass
Checklist Item 10 - Nondiscriminatory Access to Databases/Associated Signaling	Pass
Checklist Item 11 - Number Portability	Pass
Checklist Item 12 – Dialing Parity	Pass
Checklist Item 13 – Reciprocal Compensation	Pass
Checklist Item 14 - Resale	Fail

Based on this PM data review, the Company should not be granted a positive Section 271 recommendation by this Commission.

In the alternative, if the Commission finds, notwithstanding Staff's recommendation, that SBC Illinois has met the applicable Section 271 requirements, then the Commission should order the Company to make those improvements as was done in the Michigan 271 proceeding, Case No. U-12320. The Michigan Public Service Commission ("MPSC") ordered SBC Michigan to implement compliance and

improvement plans and submit reports as required by U-12320.<sup>5</sup> If the Commission orders SBC Illinois to participate in a collaborative process, similar to what has been ordered by the MPSC, based on Staff's knowledge of the improvements needed, and the current pace that SBC Illinois makes those types of improvements, a reasonable and appropriate date for SBC Illinois to have all performance measure improvement activity concluded is November 30, 2003.

Thus, Staff has looked at the PMs at three levels: the individual PM, the particular circumstances unique to each PM, and the totality of the circumstances of the universe of PMs. Looking at each PM and its particular circumstances Staff recommends the Commission find that SBCI is not able to consistently meet the standards for seventeen PMs, which impacts four of fourteen checklist items. Looking at individual PMs might lead one to discard it, however, the FCC looks at the totality of the circumstances -- all of the failures -- and discerns whether there is a pattern of conduct that would undermine our confidence that SBCI's market is capable of sustaining competition. There are a number of factors taken together that cause Staff concern. SBCI has been working on improving its systems since before 1999 to prepare itself for competition, yet it fails to satisfactorily provide over 25% of the remedied PM's. Furthermore, these failure are not isolated to one Checklist Item, but impacts four Checklist Items, substantially affecting two Checklist Items. The breadth of the problem should cause the Commission serious concern. Moreover, SBCI has failed to respond with an estimate of a reasonable timeline in which it would be able to address these failures. Since it is unknown when all of these failures can reasonably be accomplished, it would be imprudent for the Commission to find that SBCI's systems are capable of sustaining competition. Therefore, Staff recommends that the Commission find that on the whole the PM data supports the finding that further improvements to SBCI's systems are necessary to ensure that CLECs are provided nondiscriminatory access to UNEs.

#### **a) Staff Reply to SBC Illinois' PM Response**

In response to PM problems identified by Staff's, SBCI responses generally fell into four general categories: 1) We're working on it, 2) Not important, 3) Disagreement, or, 4) Not pertinent because the six month collaborative changed the rule. ICC Staff Ex. 41.0 ¶16.

SBC Illinois indicates that it is taking some action relative to some of these measures. SBCI's response, however, does not clearly state what the plans are, provides no set deadline, nor does SBCI provide Staff a defined opportunity to verify that improvements have been made. Therefore, the Commission finds that SBCI has not met its burden of proving that it currently provides non-discriminatory services in a manner that would allow competition to grow and thrive in Illinois. Although, the Commission acknowledges that SBCI is close, it has not satisfactorily proven that its systems are ready.

---

<sup>5</sup> Michigan Public Service Commission; In the matter, on the Commission's own motion, to consider SBC's, f/k/a AMERITECH MICHIGAN, compliance with the competitive checklist in Section 271 of the federal Telecommunications Act of 1996; Opinion and Order, Case No. U-12320; January 13, 2003.

SBCI also claims that certain PM issues are “not pertinent because the six month collaborative changed the rule.” It is not appropriate for SBC Illinois to indicate a PM is no longer a problem because it has been revised in the most recent 6 month collaborative process. The CLECs and Staff review were limited to the version of the business rules that was current during the PM data – Version 1.8. Additionally, the parties were not able to review results once Version 1.9 was put in place, nor is there data in the record on that version. Therefore, the Commission cannot rely upon SBCI’s assertions that problems related to PMs changed during the most recent six month collaborative process.

In the alternative, if the Commission finds, notwithstanding Staff’s analysis and recommendation, that SBC Illinois has met the applicable Section 271 requirements, any positive Section 271 recommendation must be conditioned such that this Commission is able to verify that specific actions are being taken on a definite timeline and have independent confirmation that the actions were taken. At a minimum, the Commission must verify that Company actions result in acceptable PM performance.

## **2. Staff’s Approach to Analyzing Performance Measurement Data**

Staff analyzed the PM data provided by SBC Illinois in the affidavit of James D. Ehr. Staff conducted its analysis of SBC Illinois’ performance data and formed its recommendations based on its review of this data in the format in which it was provided. During analysis of the specific PM data filed in the proceeding, Staff did not audit the data and makes no representations as to the accuracy of that reported data in its PM analysis. Additionally, there may be some confusion about which version of the business rules is applicable, and upon which Staff has performed its evaluation and makes its recommendation. Staff performed its evaluation of performance data that SBC has filed in its evidence based on the current version of the business rules -- Version 1.8 -- and not on what the PM data might look like under different business rules (e.g., Version 1.9). The Commission agrees with this approach. We have not been presented with information based on Version 1.9 of the Business Rules, therefore this evaluation is not based on version. ICC Staff Ex. 29.0 ¶20.

21. Staff used two primary methods to assess SBC Illinois’ wholesale performance to CLECs – at the PM or aggregate level and at the individual sub-measure level. Out of 150 PMs, 122 have been designated as remedied measures, (i.e., remedies are paid to both the State and CLECs on these measures), and the remaining 28 PMs are considered to be diagnostic purposes. Staff’s analysis focused on the 122 remedied measures, since diagnostic measures are typically inconclusive, report on different aspects of other reported measures, or too new to have sufficient data to provide conclusions. ICC Staff Ex. 29.0 ¶21.

SBC Illinois provided three months of data for each of the performance measures and sub-measures. If SBC Illinois satisfies the standard for a particular performance measure in each of the three months, or failed to meet the standard in each of the three months, then SBCI’s performance either passed or failed, respectively. For those PMs



in which SBCI did not uniformly pass or fail, a case-by-case analysis of the substance of the particular measure, its importance to competition, and other factors was performed to determine whether SBCI's provisioning met the requirements for Section 271. ICC Staff Ex. 30 ¶10.

Staff employed non-binding guidelines for those PMs that did not uniformly pass or fail. For PMs that are not disaggregated into two or more sub-measures, SBCI must meet or exceed the standard in two of the three months for which there data is available. For parity measures with three months of data, this means that for two out of three months the reported "Z" value must be 1.645 or less. For benchmark measures with three months of data, this means that SBC Illinois must exceed the benchmark for two out of the three months for the measure to receive a pass. If a Z value was missing for one month, then the remaining two months must meet or exceed the performance standard for the measure to be rated a pass. Similarly, if a Z value was available only for one month, SBC Illinois must pass the one month for Staff to rate the measure as a pass. In this way all performance measures with at least one month of data were evaluated. ICC Staff Ex. 30 ¶10.

SBCI did not report Z values when there were less than 10 observations. Performance measures that have missing Z values for all months under consideration were excluded from pass/fail classifications because there is no way to judge performance when there is insufficient data for valid statistical testing. ICC Staff Ex. 30 ¶11.

It is Staff's view that these pass/fail guidelines balance the interests of CLECs and SBC Illinois in a fair and equitable manner. Staff's belief is that SBC Illinois should meet agreed to standards a substantial majority of the time, however it recognizes that given the limited data provided by SBCI, requiring SBCI to pass all performance measures 3 out of 3 months may be too strict if the performance measure at issue does not relate to public health or safety. ICC Staff Ex. 30 ¶12.

When a measure is disaggregated into two or more sub-measures Staff uses a two step approach in its analysis. First, the 66% pass guideline is applied to each sub-measure. Then, Staff computes the percent of sub-measures that pass, and if the percentage is greater than 90%, the performance measure as a whole will generally be considered a pass. ICC Staff Ex. 30 ¶13. Staff believes that SBC Illinois should be required to provide high quality and reliable wholesale service before it receives Section 271 approval. If SBC Illinois fails to provide excellent service then this failure may adversely affect local competition. At the same time SBC Illinois should not be held to a standard of absolute perfection. Consequently, 90% was chosen as the guideline, in the attempt to meet the objectives of this analysis and to fairly balance the interests of SBC Illinois with the interests of the CLECs. I also note that SBC Illinois is already granted a substantial degree of forgiveness, since the standards for most individual measures do not require perfection and Staff's guidelines allow SBC Illinois to fail one out of three months and still be rated a pass. ICC Staff Ex. 30 ¶15.

Analysts, however, were encouraged to exercise judgment and deviate from both the 66% guideline and the 90% guideline when data and evidence provide justification

for deviating. ICC Staff Ex. 30 ¶¶15-24 (setting forth examples of how a Staff analyst may exercise his/her judgment).

*Analysis at PM Level:* Utilizing the assessment methodology described above, on the PM data provided by SBCI yielded the following overall results at the PM level for remedied measures:

SBC Illinois Wholesale Performance Remedied Measures Only PM Level	
Evaluated	122
No/Not Enough Data Reported	15
Had Data Reported	107
Pass	75
Percent Pass	70.1%
Fail	32
Percent Fail	29.9%

ICC Staff Ex. 29.0 ¶¶21.

Accordingly, at the PM level for remedied measures, SBC Illinois failed to provide 29.9% of the 122 PMs in a non-discriminatory manner. Therefore, in summarizing the analysis of the Staff affiants below, I state that SBC Illinois either passed, failed or provided satisfactory or unsatisfactory service. In making that over all finding, when I use the terms “failed” or “unsatisfactory”, I am stating that SBC Illinois failed to provide service with respect to a particular PM or sub-measure in a non-discriminatory manner. Conversely, when I use the terms “pass” or “satisfactory”, I am stating that SBC Illinois provided service with respect to that particular PM or sub-measure in a non-discriminatory manner.

*Analysis at sub-PM Level:* The other primary assessment methodology relative to SBC Illinois’ wholesale performance can be conducted at the sub-measure level. Of the 921 sub-measures evaluated, 437 did not have enough data reported to be included, leaving 484 sub-measures to be evaluated.<sup>6</sup>

SBC Illinois Wholesale Performance Remedied Measures Only Sub-Measure Level	
Evaluated	921
No/Not Enough Data Reported	437
Had Data Reported	484
Pass	422

<sup>6</sup> Staff’s sub-measure counts may be different than SBC Illinois’ sub-measure count because, 1) Staff doesn’t review diagnostic measures, 2) Staff counts sub-measures that have as few as 1 month of data while SBC counts a sub-measure only if it has 3 months of data.

Percent Pass	87.2%
Fail	62
Percent Fail	12.8%

ICC Staff Ex. 29.0 ¶23.

Accordingly, at the sub-measure level for remedied measures, SBC Illinois' failed to provide 12.8% of the 484 sub-measures in a non-discriminatory manner.

SBC Illinois argues that its performance measurement results met or surpassed parity or benchmark standards for 87.7%, or 398 of 454 performance measurements for which a "HIT" or "MISS" assessment could be made, in at least two of three months during the study period (September – November 2002). Ehr Affidavit, paragraph 41. Staff does not agree that an 87.7% "HIT" performance demonstrates that SBC Illinois provides CLECs interconnection and access on a non-discriminatory basis. To the contrary, an 87.7% "HIT" performance demonstrates that SBC provides measurably discriminatory service 12.3% of the time. Some CLECs value certain performance measures more than other CLECs. While the 87.7% performance might be very good to a CLEC that values the performance measures contained in the 87.7% category, it might represent very bad performance to a CLEC that values the performance measures contained in the 12.3% failed category. Additionally, the number 87.7% is not absolute; rather, it is relative and subject to judgment. The FCC does not expect, nor has it ever required, 100% perfection in performance measurements prior to granting Section 271 approval. Staff's analysis is in line with that, since it allows one month's failure out of three months – a significant reduction from 100% perfection. And given such leeway, SBCI failed to meet 29.9% of the remedied PMs, and of those 17 are Key Performance Measures. Consequently, SBCI does not provide non-discriminatory service to four checklist items – 2, 4, 7 and 14.

#### **a) Staff's Reply To SBC Illinois Response**

Staff explained that under the statistical guidelines it used to evaluate SBC's performance measure results, a performance measure was considered a pass if it met or exceeded its standard (benchmark or parity) for 66% of the months for which data was available. ICC Staff Ex. 42.0 at ¶ 3. Staff further explained that when a measure was disaggregated into two or more sub-measures, then a two-step approach was used. *Id.* First, the 66% pass guideline was applied to each sub-measure. Then, Staff computed the percent of sub-measures that passed, and if the percentage was greater than 90%, the performance measure was considered a pass. Finally, Staff subject matter experts were encouraged to exercise judgment and deviate from the guidelines when data and evidence provided justification for doing so.

Staff noted that SBC Illinois did not take issue with the statistical guidelines that Staff used to evaluate the company's performance. *Id.* at ¶ 4. Rather, SBC Illinois was concerned that Staff seemed to treat the 90% guideline as a hard and fast rule. ICC Staff Ex. 42.0 at ¶ 4; SBCI Ex. 2.2 (Ehr) at 8. Specifically, SBC Illinois contends that Staff should have deviated from the 90% guideline, and gave it passing grades when the guidelines suggest failing grades, because -- in SBCI's opinion -- there were good reasons for doing so. ICC Staff Ex. 42.0 at ¶ 4; SBCI Ex. 2.2 (Ehr) at 9. According to

SBC Illinois, both Staff witness McClerren and Staff witness Weber were “too rigid” in their adherence to the statistical guidelines. SBCI Ex. 2.2 (Ehr) at 11 and SBC Illinois Reply Comments at 38 .

Staff witness Mr. Staranczak disagreed with Mr. Ehr’s assertion that Staff witnesses improperly adhered to the statistical guidelines he developed. ICC Staff Ex. 42.0 at 5. He observed that the Staff witnesses are experts in the subject matters addressed in their respective testimonies and knowledgeable about the competitive difficulties CLECs face in the local exchange market. *Id.* Staff witnesses, because of their subject matter expertise and knowledge of particular facts and circumstances, were allowed to deviate from the statistical guidelines in their evaluation of SBC Illinois’ performance measure results. *Id.* However, Mr. Staranczak pointed out that it is entirely appropriate for Staff witnesses to adhere to the statistical guidelines when in their opinion adhering to the guidelines was warranted by the circumstances. *Id.* at ¶ 6. This is what Staff witnesses McClerren and Weber did -- use their background and experience to judge the significance of SBC Illinois’ inability to provide satisfactory performance for certain sub-measures and on that basis conclude that SBCI failed the overall measure associated with those sub-measures. *Id.* In short, judgment cuts both ways. Staff points out that SBC Illinois cannot at the same time applaud Staff witnesses for exercising discretion when this favors SBC Illinois and then admonish Staff for exercising judgment that does not favor SBC Illinois.

Finally, Mr. Staranczak notes that Staff grants SBC Illinois a significant amount of forgiveness, since Staff’s guidelines allow SBC Illinois to fail a sub-measure one out of every three months and still be given a pass on that sub-measure. ICC Staff Ex. 42.0 at ¶ 7. The 90% guideline provides an extra amount of forgiveness to SBC Illinois by allowing it to fail a sub-measure all three months and still be given a pass for the overall measure associated with that particular sub-measure. *Id.* SBCI Illinois apparently wants the 90% guideline changed to a 75% guideline. SBCI Ex. 2.2 (Ehr) at 5. In Staff’s opinion, SBC Illinois proposal would provide too much forgiveness. Under such a proposal SBC Illinois could, for a measure with 20 associated sub-measures, fail 5 sub-measures all 3 months and fail the remaining 15 sub-measures one month out of three and still be given a pass. ICC Staff Ex. 42.0 at ¶ 7.

Staff witnesses have discretion to deviate from the performance measure pass/fail statistical guidelines developed by Mr. Staranczak if in their judgment this is appropriate. However, Staff witnesses also can also choose to adhere to the guidelines if this is what circumstances dictate. Thus, SBC Illinois should not be surprised that Staff’s judgment does not correspond to its own. ICC Staff Ex. 42.0 at ¶ 10.

### **3. Accuracy And Reliability Of SBC Illinois' Performance Measurement Data**

#### **a) Background**

The FCC considers performance measurement data reported by BOCs to provide valuable evidence regarding a BOC's compliance or non-compliance with individual checklist items<sup>7</sup>. Therefore, in support of its Section 271 application, SBC Illinois has submitted three consecutive months (September, October, November 2002) of commercial performance data results in this proceeding (Ehr Affidavit, Attachment A) in an attempt to demonstrate that the level of service SBC Illinois provides to its wholesale customers or Illinois CLECs is nondiscriminatory. Ehr Affidavit, ¶¶6.

As a threshold matter, the FCC has said that the reliability of reported data is critical: the performance measures must generate results that are meaningful, accurate, and reproducible. In particular the FCC states that the raw data underlying a performance measurement must be stored in a secure, stable, and auditable file if a remedy plan is to be accorded significant weight.<sup>8</sup>

SBC Illinois reports 150 different performance measures on a monthly basis, that provide important statistics and results with respect to the company's performance in providing service its wholesale customers. Each performance measure reports on different aspects of SBC Illinois OSS. All 150 performance measures have its own business rule document associated with it that defines specifically what aspect of SBC Illinois' OSS is being measured. In addition, the business rule document lists the specific data to be included as well as excluded, the levels of disaggregation (or various reporting levels for the performance measure), the calculation formula, the reporting structure (whether data for CLECs, SBC retail, or SBC affiliates is reported), whether the measure is applicable to Tier 1 or Tier 2 of the performance remedy plan and if so what level is assigned (low, medium, or high) for each remedy tier and finally indicates whether the performance measure has a parity or benchmark standard. If the measure has a benchmark standard then the specific benchmark the company is to meet is defined. All of this information is detailed in each business rule document and SBC Illinois is supposed to report its performance measures consistent with the business rule documents discussed with the CLEC community and approved by the Commission.

#### **b) Staff's Position**

Mr. Ehr states that the performance measurement data and standards being discussed in this proceeding are the result of many years of development and discussions between SBC Illinois and CLECs. Ehr Affidavit, ¶¶13. SBC Illinois began reporting performance measurement data in Illinois in May of 2000<sup>9</sup>. SBC Illinois' performance measurements and its processes and controls to collect and report the

---

<sup>7</sup> *Application of Verizon New York Inc. et al. for Authorization To Provide In-Region, InterLATA Services In Connecticut*, CC Docket 01-100, FCC –01-208, ¶¶7 (rel. July 20, 2001) (“Verizon Connecticut Order”).

<sup>8</sup> TX 271 Order ¶¶428.

<sup>9</sup> February 11, 2003 Tr. at 3038-3039.

data are not new, as had been the case in many of the other states in which the Section 271 review process has taken place. SBC Illinois has had more than 2 ½ years to develop, deploy and perfect its performance measurements and reporting system; notwithstanding this extended period, far too many inaccuracies and problems remain for the Commission to have confidence in the current and future accuracy of the performance measure data SBC Illinois reports.

Version 1.8 of the performance measurement business rules are in effect, and SBC Illinois is required to report performance measurement data in a manner consistent with these business rules. The performance measurement data filed in this proceeding by SBC Illinois for September, October and November 2002 must reflect the performance measurements documented in SBC Illinois' tariff (Ill. C.C. No. 20, Part 2, Section 11.E). Both BearingPoint and Ernst & Young's evaluations used the same set of Business Rules (version 1.8 or IL tariff Ill. C.C. No. 20, Part 2, Section 11.E) for purposes of their respective evaluations.

Ms. Weber's initial affidavit provided evidence for her position that SBC Illinois' performance measurement data is neither accurate nor reliable and should not be used as evidence of compliance by the company with respect to the 14-point Section 271 competitive checklist. Specifically, she supported this conclusion with three main items (i) the BearingPoint December 20, 2003 Performance Metric Report, (ii) the Ernst & Young Performance Measurement Examination, and (iii) SBC Illinois' additional but insufficient assurances of reliability.

Also, Ms. Weber understands it to be the case that as a result of the latest six-month review collaborative session that SBC Illinois represented in the hearings that two-thirds to 75% of the performances measures will be affected when the six-month review changes are implemented. The implementation of these agreed-upon six-month review changes is scheduled for the first and second quarter of 2003<sup>10</sup>. This means the performance measures and business rules being evaluated, as evidence of compliance in this proceeding will soon be changing. Ms. Weber considers this to be an area of great concern, since SBC Illinois has not proven that its procedures and controls in place to make changes to performance measures will ensure that additional data reliability concerns will not be introduced when the six-month review changes are implemented by SBC Illinois.

In Staff witness Weber's opinion, the current findings or results of the BearingPoint and Ernst & Young reviews conducted of SBC Illinois' performance measurement data indicate that the three months of commercial performance data results submitted by SBC Illinois in this proceeding, cannot be relied upon. Therefore, Ms. Weber avers that the performance measure data submitted by SBC Illinois in this proceeding should not be given significant weight as evidence of it compliance with the Section 271 14 point checklist. Further, in Ms. Weber's opinion, the additional assurances of performance measurement data reliability provided by SBC Illinois affiant Ehr do not adequately explain away the inaccuracies that currently exist in SBC Illinois' performance measurement data.

---

<sup>10</sup> February 11, 2003 Tr. at 3042.

### **c) BearingPoint December 20, 2003 Performance Measurement Report**

#### **Staff's Initial Position**

BearingPoint began its investigation of SBC Illinois' performance measurements in November 2000. BearingPoint continues to issue findings on its performance metric evaluation weekly, and SBC Illinois continues to address the concerns raised by BearingPoint. The facts and findings presented by BearingPoint in its December 20, 2002 OSS Evaluation Project: Performance Metric Report ("Metrics Report")<sup>11</sup>, taken alone — and without even considering the findings issued in the E&Y evaluation which I touch upon later -- raise serious doubts as to the integrity and accuracy of SBC Illinois' performance measurement data and SBC Illinois' ability to produce the data, which contradict the statements of Mr. Ehr. Ehr Affidavit, ¶¶214, 379.

In its performance metric evaluation, BearingPoint evaluated 303 individual evaluation criteria. BearingPoint assigned each evaluation criteria one of four results similar to the operational test as explained earlier in my affidavit. Below in Table 2 is a high level summary of BearingPoint's results (Metrics Report at 8).

**Table 2 – BearingPoint Performance Metrics Evaluation Results**

<b>Test Family</b>	<b>Number of Evaluation Criteria</b>				
	<b>Satisfied</b>	<b>Not Satisfied</b>	<b>Indeterminate</b>	<b>Not Applicable</b>	<b>Total</b>
Performance Metrics Reporting (All 5 tests)	64	116	91	32	303

As of December 20, 2003, BearingPoint was able to report that the company satisfied 64 evaluation criteria (23.7% satisfied), did not satisfy 116 evaluation criteria (42.8% not satisfied) and are still working to determine a result for 91 evaluation criteria (33.6%). BearingPoint has also determined that 32 of the evaluation criteria are not applicable to its review, and therefore assessments for these items have not and will not be provided. In cases where evaluation criteria are not satisfied, BearingPoint indicates that CLECs and regulators may diminish their reliance on performance metrics as they assess the quality of the service being provided by SBC Illinois.<sup>12</sup> In other words, CLECs and the Commission should not rely upon these aspects of SBC Illinois' performance measurement system until they have proven to be satisfied.

<sup>11</sup> As admitted by mutual agreement of the parties during the February 5, 2003 hearing.

<sup>12</sup> BearingPoint Performance Metrics report at 30.

SBC witness Ehr states that none of BearingPoint's findings to date in its Metrics Review are sufficient enough to warrant a finding of non-compliance, or to preclude the Commission from evaluating SBC Illinois' compliance with the 14 point checklist based on the performance measure data submitted and all of the information before it. Ehr Affidavit, ¶243. Ms. Weber, however, cannot concur with these statements. As indicated in Table 2 above, the totality of findings reported by BearingPoint demonstrate that we are currently precluded from assessing SBC Illinois' compliance with the Section 271 checklist based upon the September, October and November 2002 performance measurement data submitted by the company in this proceeding. Ms. Weber contends that the company has the burden to demonstrate that its performance measurement results are accurate and reliable, and it has failed to meet this burden. Mr. Ehr stated, in this proceeding, that the only way Staff would know problems exist in the underlying data or reporting of SBC Illinois' performance is through SBC Illinois' own admission, or through an independent review.<sup>13</sup> BearingPoint is in the process of conducting its independent review and as of December 20, 2002 reported that SBC Illinois failed to satisfy 116 of the key evaluation criteria defined for the examination and was unable to provide an opinion at the time on 91 evaluation criteria. This represents over 76% of the evaluation criterion being evaluated.

#### Detailed BearingPoint Performance Measurement Results

Table 3, below, prepared by Ms. Weber, breaks down the high-level metrics results by the individual performance measurement tests BearingPoint conducts. Ms. Weber's opinions regarding the interpretation we should give to this data is also set forth below.

**Table 3 – BearingPoint Metrics Evaluation Results by Test Family**

<b>Test Family</b>	<b>Number of Evaluation Criteria</b>				
	<b>Satisfied</b>	<b>Not Satisfied</b>	<b>Indeterminate</b>	<b>Not Applicable</b>	<b>Total</b>
PMR1	13	59	54	0	126
PMR2	3	0	0	0	3
PMR3, PMR3B	26	4	0	0	30
PMR4	2	12	26	32	72
PMR5	20	41	11	0	72

#### PMR1: Data Collection and Storage Verification and Validation Review

<sup>13</sup> February 11, 2003 Tr. at 3097-3098.



BearingPoint's PMR1 review evaluates SBC Illinois' policies and practices for collecting and storing unprocessed data that resides in, and flows through, SBC Illinois' information systems, as well as processed data used in the creation of performance metrics and retail analogs.<sup>14</sup> It is important to ensure a company properly collects and stores its unprocessed data or raw data, because without such data, performance measurements will not be reported accurately and complete and thorough audits cannot be conducted.

BearingPoint determined SBC Illinois satisfied 12 evaluation criteria (10% Satisfied), did not satisfy 60 (48% Not Satisfied), and has not yet determined a result for the remaining 54 evaluation criteria.

There are seven subtests within PMR1 that assess SBC Illinois' metrics data collection and storage processes documentation, metrics data processing and technical requirements documentation, metrics data processing and storage capacity management, metrics data processing controls, back-ups of critical metrics data, metrics data retention, and metrics data read and write access.

Not one of these seven subtests have a complete set of satisfied results and two of the subtests, metrics data processing and storage capacity management, and metrics data read and write access are completely indeterminate at this time. BearingPoint has uncovered issues with respect to the completeness of metrics data collection and storage process documentation and metric data processing and technical requirements documentation. Since December 20, 2002, BearingPoint has issued additional findings that SBC Illinois' data processing procedures do not have adequate edits and controls and SBC Illinois has been unable to demonstrate that certain systems of record and/or reporting system data have been retained in compliance with regulatory requirements<sup>15</sup>.

The PMR1 data evaluation criteria are vital to SBC Illinois' performance metrics data collection and processes, if the company cannot demonstrate that it can satisfy the majority of these evaluation criteria, the findings in BearingPoint's Metrics Report raise too many questions to trust that SBC Illinois has adequate data collection and storage practices and procedures in place to be able to report its performance metrics data in an accurate and consistent manner.

#### PMR2: Metrics Definitions and Standards Development and Documentation Verification and Validation Review

BearingPoint's PMR2 review assesses SBC Illinois' policies and practices for developing, documenting and publishing metric definitions, standards and reports<sup>16</sup>.

BearingPoint's Metrics Report states that it determined the company satisfied the evaluation criteria established for the PMR2 test and that no test aspects remain. Specifically, through observations, BearingPoint was able to determine that we

---

<sup>14</sup> For further description of the SBC Illinois' data collection and storage business process description, test methodology, and test targets and measures please see the BearingPoint's Performance Metrics Report at 13-19.

<sup>15</sup> BearingPoint Exception Report 186, [www.osstesting.com](http://www.osstesting.com).

<sup>16</sup> For further description of the SBC Illinois' metrics definition and standards development business process description, test methodology, and test targets and measures please see the BearingPoint's Performance Metrics Report at 20-22.

approved the business rules in use by SBC Illinois during test, the business rules are published through a distribution channel accessible by relevant parties, and that the performance measurement reports are published on time through a distribution channel also accessible by relevant parties.

#### PMR3: Metrics Change Management Verification and Validation Review

BearingPoint's PMR3 review assesses SBC Illinois' overall policies and practices for managing changes to metrics and for communicating these changes to the ICC and CLECs.<sup>17</sup>

BearingPoint reports the company satisfied 12 of the evaluation criteria and has not satisfied four evaluation criteria. The four criteria BearingPoint reports the company has failed, but which BearingPoint continues to evaluate, are PMR3-6, PMR3-7, PMR3-12 and PMR3-16. Specifically, BearingPoint has observed instances where SBC Illinois' metrics change management process does not provide for the monitoring of source systems for changes that impact metrics reporting; SBC Illinois does not comply with intervals for implementing changes to metrics business rules; SBC Illinois does not have adequately defined procedures or tools to test changes to calculation programs, processes; and systems involved in the production and reporting of performance measurements and that performance metrics changes did not follow the documented metrics change management process. These findings, in Ms. Weber's opinion, reflect grave deficiencies in key processes that a company needs to have in place to implement changes to its performance measurements without impacting the integrity or accuracy of the data being reported.

#### PMR3B: Performance Measurement Restatement and Remedy Recalculation Validation Review

BearingPoint's PMR3B review assesses SBC Illinois' overall documented policies and practices for recalculating remedy payments resulting from restated performance measurements, and for communicating these changes to the Commission and CLECs. The test does not evaluate SBC Illinois' adherence to the documented policies and practices<sup>18</sup>, and therefore only looks at written material for how the process should occur.

BearingPoint's review was conducted from April through November 22, 2002 and BearingPoint determined SBC Illinois satisfied each of 14 evaluation criteria related to written documentation, policies and procedures with respect to remedy recalculations when performance measurement restatements occur.

#### PMR4: Metrics Data Integrity Verification and Validation Review

BearingPoint's PMR4 review evaluates the overall policies and practices for processing the data used by SBC Illinois in the production of the reported performance

---

<sup>17</sup> For further description of the SBC Illinois' metrics change management business process description or the specific test methodology and test targets and measures see the Metrics Report at 23-25.

<sup>18</sup> For further description of the SBC Illinois' performance measurement restatement and remedy recalculation business process description or the specific test methodology and test targets and measures see the Metrics Report at 23-25.

metrics standards.<sup>19</sup> This review is intended to verify that SBC Illinois correctly captures data from external sources, and transfers the data from the point of collection down to the reporting system while maintaining the overall integrity of the data.

For each of the 18 different groupings of SBC Illinois' 150 performance measurements ("Measure Groups"), as defined by the company (Appendix E to BearingPoint's written responses to the February 5, 2003 hearing), BearingPoint is evaluating whether or not each of the Measure Groups satisfy or meet the following four criteria: (1) required source records are included in data used to calculate measures; (2) inappropriate records are not present in processed data used to calculate measures; (3) records in processed data used to calculate measures are consistent with unprocessed data from source systems; and (4) data fields in processed data used to calculate measures are consistent with unprocessed data from source systems.<sup>20</sup>

As of the date of the Metrics Report, BearingPoint had only been able to determine that the performance measures in the NXX Measure Group satisfy the applicable evaluation criteria. BearingPoint has found problems with the following 8 Measure Groups; Ordering, Provisioning, Billing, 911, Coordinated Conversions, Bona Fide Requests and Other. BearingPoint, in its review, determined that it could not conduct the data integrity review for the following five Measure Groups: Miscellaneous Administrative, Directory Assistance/Operator Services, Poles, Conduits and Right-of-way, Collocations, and Directory Assistance Database. The remaining four Measure Groups are still under investigation; Pre-ordering, Provisioning, Interconnection Trunks and Facilities Modification.<sup>21</sup> Since the Metrics Report was published BearingPoint has issued four new findings in its review of SBC Illinois' data integrity; Exception Reports 183, 184, 185 and Observation Report 783.

As Ms. Weber indicates, successful completion of this test is very important, as data integrity problems, such as missing data or incorrect transformation of data, may result in performance measurements being misstated.<sup>22</sup>

#### PMR5: Metrics Calculations and Reporting Verification and Validation Review

BearingPoint's PMR5 review assesses the processes used by SBC Illinois to calculate performance measurement results and retail analogs. The test also assesses consistency between our approved metrics business rules, and the rules used by SBC Illinois to calculate the performance metrics.<sup>23</sup>

BearingPoint, in its PMR5 evaluation determines, for each of the 18 different Measure Groups of SBC Illinois' 150 performance measurements, whether or not each Measure Group satisfies or meets the following four criteria: (1) required metrics are included in SBC Illinois performance measurement reports; (2) SBC Illinois reported and

---

<sup>19</sup> For further description of the SBC Illinois' metrics data integrity business process description or the specific test methodology and test targets and measures see the Metrics Report at 29-31.

<sup>20</sup> Metrics Report at 119.

<sup>21</sup> Id.

<sup>22</sup> February 5, 2003 Tr. at X. Response to Staff Question BE/Staff M7.

<sup>23</sup> For further description of the SBC Illinois' metrics calculations and reporting business process description or the specific test methodology and test targets and measures please see the BearingPoint's Performance Metrics Report at 29-31.

BearingPoint calculated metrics values agree; (3) SBC Illinois' implemented metrics calculations are consistent with the document metrics calculation rules; and (4) SBC Illinois implemented metrics exclusions are consistent with the documented metrics exclusion rules.<sup>24</sup>

BearingPoint originally began its PMR5 review by analyzing performance measurement data reported by the company for the data month of April 2001, contrary to SBC witness Ehr's testimony that evaluation began with an evaluation of January-March 2002. Ehr Affidavit, ¶282. After working on the data reported in April 2001 for some time, BearingPoint, in discussions with SBC Illinois and Staff, decided that the evaluation ought to be moved to a more recent data month. BearingPoint's findings indicated that SBC Illinois needed to make a number of calculation changes, and modifications to correct deficiencies; SBC Illinois indicated that the results of those changes would be seen in later data months. Therefore, SBC Illinois asked BearingPoint to move its evaluation to the October 2001 data month. BearingPoint began its evaluation of the October 2001 data month and continued to uncover problems, issued Observation Reports and worked with the company to communicate the issues and questions it had. Once again, it was determined that the evaluation should be moved to a more recent data month, and January 2002 data was selected and the test continued. In the summer of 2002, the test again came to a point where such a large number of corrections and clarifications or restatements had to be made to the January 2002 data that the parties again determined to move the evaluation period to a more recent data month. SBC Illinois suggested the evaluation be moved to the July and August 2002 data months.

Specifically, BearingPoint moved its PMR5 evaluation to the October 22, 2002 posting of SBC Illinois' performance measurement data for July and August 2002. In its Metrics Report, BearingPoint reported that it was able to verify SBC Illinois satisfied the four evaluation criteria for only the Bona Fide Request Measure Group for the October 22, 2002 posting of SBC Illinois' performance measurement data for July and August 2002. The NXX Measure Group was indeterminate and the remaining 15 Measure Groups contain one or more "Not Satisfied" result<sup>25</sup>.

It is clear that the PMR5, data replication, review by BearingPoint is not complete, and BearingPoint has been unable to verify that the company calculates its performance measurements correctly and in accordance with our approved business rules. BearingPoint's PMR5 review continues.

#### Summary of BearingPoint's Performance Metrics Results

Of the five primary test families that BearingPoint conducted tests upon, SBC Illinois has only satisfied the PMR2 review. SBC Illinois has been unable to demonstrate to BearingPoint that it can satisfy the evaluation criteria with respect to its data collection and storage capabilities, its metrics change management policies and practices, its performance measurement data integrity and its ability to calculate its performance measurement results and retail analogs. The specific metrics deficiencies reported by BearingPoint which to these test aspects and the evaluation criteria

---

<sup>24</sup> BearingPoint Metrics Report at 189.

<sup>25</sup> Id.

BearingPoint has been unable to opine upon 26 months after beginning the evaluation of SBC Illinois' performance metrics data and reporting systems, provides, in Ms. Weber's opinion, clear indication that there is more work to be done and that at this time, we should not rely upon the performance measurement data being reported by the company.

BearingPoint's most recent published Metrics project plan, which was developed in conjunction with SBC Illinois, indicates the performance measurement review is scheduled to complete in June 2003. Based upon Ms. Weber's involvement in this project, and the repeated delays that she has witnessed since its inception, she considers it unlikely that the review will be successfully completed within the June 2003 timeframe.

Mr. Ehr states that SBC Illinois is not asking us to terminate the independent third party metrics review and that SBC Illinois will continue to work with BearingPoint to address findings as they are raised. Ehr Affidavit, ¶244.

If we elect to provide a positive Section 271 recommendation to the FCC prior to successful completion of the BearingPoint review, Ms. Weber recommends that we do so contingent upon a commitment from SBC Illinois that it will address all deficiencies raised by BearingPoint in the metrics review and commit to successfully conclude the BearingPoint metrics review no later than November 2003.

#### Staff's Reply Position

As SBC Illinois argues in this proceeding and as the Michigan Commission in its Section 271 reply comments to the FCC states, the company's ongoing activity related to the verification of SBC's performance measurement need not be completed prior to Section 271 approval, as the FCC discussed in its Georgia 271 order<sup>26</sup>. It must be reiterated, however, that the situation in Georgia was not in any way comparable to the situation here in Illinois, inasmuch as the Georgia audit was very nearly complete. The March 7, 2003 BearingPoint performance measurement test progress report produced for the Michigan Commission (which is the most recently published performance metrics results in the Ameritech region which SBC believes is also a good indication of the progress made in Illinois<sup>27</sup>) reveals the following data:

---

<sup>26</sup> James D. Her Rebuttal Affidavit, ¶118. FCC WC Docket No. 03-16, Reply Comments of the Michigan Public Service Commission at 6.

<sup>27</sup> James D. Ehr Rebuttal Affidavit, ¶119.

**BearingPoint Michigan Performance Metrics Evaluation Results (March 7, 2003)**

<b>Test Family</b>	<b>Number of Evaluation Criteria</b>				
	<b>Satisfied</b>	<b>Not Satisfied</b>	<b>Indeterminate</b>	<b>Not Applicable</b>	<b>Total</b>
Performance Metrics Reporting (All 5 tests)	83	93	94	32	302

This demonstrates that the company has only Satisfied 31% of the evaluation criterion, has been proven to Not Satisfy 34% of the criterion, and is still being evaluated for the remaining 35% of the evaluation criteria. These results by no means indicate the status of an evaluation that is nearly complete and is, therefore, not comparable to the situation in Georgia referred to above.

Mr. Ehr in his reply affidavit says that evaluation criteria determined to be “Not Satisfied” is not an affirmative conclusion that there is a problem but rather that the test is not complete. Ehr Reply Affidavit, ¶121. Again, this is not the case. If BearingPoint has marked an evaluation criteria as Not Satisfied then it has determined a problem or problems exist, and it is an affirmative conclusion. Mr. Ehr is correct in his second statement that the test is not complete. Due to the “test until you pass” nature of the review, work to verify the satisfaction of the criterion continues until a Satisfied result is achieved or until Staff or we indicate no further testing should occur. Evaluation criteria with indeterminate results, on the other hand, are those for which work is continuing and at the point in time the indeterminate result was assigned there was not sufficient information for BearingPoint to indicate if the evaluation criteria was Satisfied or Not Satisfied.

Mr. Ehr in his reply affidavit indicates that the number of performance measurement restatements that SBC Illinois has made over the past year does not lend support or evidence that control problems exist. Ehr Reply Affidavit, ¶140-142. He supports his position with a quote from John Eringis of BearingPoint taken during the February 5, 2003 hearings in this proceeding. I agree with Mr. Eringis’ statement that restatements during the current period reflect the company’s corrections of problems found by either BearingPoint or Ernst & Young. Mr. Eringis, however, states further that in general, a certain level of restatements may be suggestive of existing control problems. Therefore, restatements that occurred prior to the BearingPoint and Ernst & Young reviews and those that may appear in the future are suggestive that problems in controls may exist and should be investigated further. Moving forward, once the audits are complete, if a large number of restatements are seen it may mean that control problems within SBC’s performance measurement systems exist and should be investigated further by the Commission.

Mr. Ehr describes various open observations and exceptions to attempt to explain that they have already been addressed, or are not relevant or substantial

enough to limit the ability of parties to rely upon SBC's performance measurement data. He also states that when an observation or exception is "Closed" that it is "Satisfied" and there is no longer an issue. Ehr Reply Affidavit, ¶169. These statements are inaccurate. BearingPoint also "closes" an observation or exception when there is nothing further for them to do (for example, because SBC refuses to fix a problem, or because the fix will not be implemented during the course of the test or for the data period in question). Therefore, a closed observation or exception does not always indicate that it was found to be problem free.

To conclude, the Staff recognizes that some progress has been made with respect to the performance measurement review since the BearingPoint report was released on December 20, 2003 as SBC has argued. However, SBC's attempts to explain away the issues are not plausible, and the cumulative effect of all of the remaining deficiencies is significant<sup>28</sup>. At this time SBC is not close to completion of the BearingPoint performance metrics review and therefore the assertions of the company with respect to reliability and accuracy of its performance measurement data are unsubstantiated. Therefore at this time, the Staff cannot conclude that the performance measurement data is accurate or reliable given the audit perspective provided by BearingPoint.

The Staff again notes that, in a project management discussion the week of March 3, 2003, with both SBC Illinois and BearingPoint present, Ms. Weber was told by SBC Illinois that the earliest possible date the performance measurement review will be successfully completed is now July 31, 2003.

Accordingly, the Staff recommends that we should not provide positive Section 271 approval until SBC Illinois can demonstrate its performance measurement data is reported accurately and reliably on a consistent basis and the BearingPoint review is substantially complete. If we find that SBC has met its Section 271 requirements prior to successful completion of the SBC's performance measurement review by BearingPoint, the Staff recommends that any positive endorsement by us be conditioned upon a commitment from SBC Illinois that it will address all deficiencies raised by BearingPoint in the metrics review and commit to successfully conclude the BearingPoint metrics review no later than November 2003. If SBC Illinois does not believe the November 2003 is achievable then it should provide a date it will commit to complete the BearingPoint performance metrics review in its surrebuttal filing.

#### **d) Ernst & Young Performance Measurement Examination**

##### **Background**

---

<sup>28</sup> Open performance measurement observations and exceptions applicable to Illinois as of the March 4, 2003 observation and exceptions call include 13 Exceptions: 41, 111, 134, 157, 174, 175, 176, 179, 181, 183, 186, 187, 188; and 71 Observations: 429, 461, 488, 538, 584, 587, 613, 619, 623, 624, 625, 627, 631, 633, 637, 638, 639, 643, 645, 646, 661, 664, 676, 679, 684, 686, 687, 688, 697, 709, 710, 717, 725, 729, 732, 737, 738, 739, 747, 748, 749, 750, 751, 755, 766, 767, 768, 769, 771, 778, 785, 786, 787, 791, 792, 793, 796, 797, 798, 800, 802, 803, 805, 806, 807, 809, 810, 811, 812, 813, 814. The specific exception and observation reports can be found on [www.osstesting.com](http://www.osstesting.com).

SBC Illinois hired Ernst & Young, LLP (“E&Y”) to conduct an evaluation of its performance measurements in Illinois in late October 2002<sup>29</sup>, notwithstanding the fact that BearingPoint had already been approved by us to perform similar work that SBC requested of E&Y. Specifically, E&Y performed an evaluation similar to aspects of BearingPoint’s PMR1, PMR4 and PMR5 reviews.

SBC hired E&Y to conduct a performance metrics evaluation for the state of Michigan in May 2002 and E&Y in the hearings on February 12, 2002 indicated that much of the work E&Y conducted under the Michigan engagement was performed on a five state basis. February 12, 2003 Tr. at 3307-3310, 3321.

#### Staff’s Initial Position

Ms Weber has evaluated the information provided by E&Y, and is of the opinion that findings in the E&Y report present strong evidence that SBC Illinois’ performance measurement data is unreliable.

In its Scope and Approach document, E&Y explains that SBC asked it to perform two separate examinations. Ehr Affidavit, Attachment N.

- (a) Attestation Examination of the Accuracy and Completeness of SBC Ameritech’s Performance Measurements for a three month period in accordance with the Business Rules (“Compliance Examination”)
- (b) Attestation Examination of the Effectiveness of Controls over SBC Ameritech’s Process to Calculate Performance Measurements for a three month period (“Controls Examination”)

E&Y’s evaluations looked at SBC Illinois’ performance measurement data and controls for the March, April and May 2002 time period against the Business rules in accordance with SBC Illinois Tariff: ILL CC. No. 20 - Part 2 – Section 10 – Section E. Id.

During Ms. Weber’s analysis of E&Y’s Compliance Report and Controls Report, she concluded that the E&Y and BearingPoint evaluations are quite different from one another. While, in Ms. Weber’s opinion, there is overlap in the two reviews, there are aspects of each review that are not included in the other. Specifically, Ms. Weber notes that portions of BearingPoint’s PMR1 test, and all of its PMR2 and PMR3 tests were not covered by E&Y’s examinations. In addition, Ms. Weber notes that the methods employed by E&Y in its review to satisfy the BearingPoint PMR4 and PMR5 test parameters outlined in our approved Master Test Plan are different from BearingPoint’s, and therefore cannot be considered as a replacement or substitute for the PMR4 and PMR5 tests BearingPoint is conducting.

#### Compliance Evaluation

In its Report to Management in its Compliance Evaluation, E&Y states: “In our opinion, considering the company’s interpretations of the Business Rules discussed in Attachment B of the Report of Management, and except for the material noncompliance

---

<sup>29</sup> February 12, 2003 hearing Tr. at 3305.



described in Column 3 of Attachment A of the Report of Management, the company complied, in all material respects, with the Business Rules during the Evaluation Period[.]” Ehr Affidavit, Attachment P.

Ms. Weber considers it vital, in order to understand precisely what E&Y is asserting with its opinion, to carefully examine the quantity and magnitude of the items that E&Y identifies as being considerations and exceptions to its opinion. Specifics regarding these matters are set forth in E&Y’s findings of material noncompliance as documented in Attachment A of E&Y’s report, Ehr Affidavit, Attachment Q, and the company’s interpretations of the Business Rules as documented in Attachment B. Ehr Affidavit, Attachment R.

#### E&Y Findings of Material Noncompliance

E&Y defines “Material Noncompliance” as exceptions to compliance with the Business Rules for the months of March, April and May 2002 that met either of the following criteria. Ehr Affidavit, Attachment P.

- (a) The error, if corrected, would change the original reported performance measurement (“PM”) result by five percent or more (or)
- (b) The error, if corrected, would cause the PM’s original reported parity attainment/failure or benchmark attainment/failure to reverse.

The level of materiality E&Y applied was at the sub-measure level and was determined against the aggregate CLEC data<sup>30</sup>. E&Y did not look at the cumulative effect of exceptions on a given measure/sub-measure. February 12, 2003 Tr. at 3370.

The definition E&Y provides for Material Noncompliance demonstrates, in Ms. Weber’s view, that the exceptions or errors noted are material, and have a significant impact on the results presented for the data months evaluated. E&Y classified its exceptions of Material Noncompliance by the statements of SBC Illinois regarding the action taken or to be taken by the company for the exceptions in each category. Following are the five classification categories;

- I. Exceptions Corrected and March, April and May 2002 Data was Restated
- II. Exceptions Corrected but March, April and May 2002 Results were Not Restated
- III. Exceptions Corrected but Not Yet Reported or Restated
- IV. Exceptions in which No Corrective Action is Planned by the Company
- V. Exceptions in the Process of being Corrected

Table 4 below shows various statistics on the exceptions E&Y found by category as they relate to the 150 performance measurements that SBC Illinois reported for the E&Y evaluation time period (March-May 2002).

---

<sup>30</sup> February 12, 2003 hearing Tr. at 3369.

**Table 4 – E&Y Exceptions of Material Noncompliance**

	Exception Categories					
	I	II	III	IV	V	ALL
Number of Exceptions	53	51	2	7	15	<b>128</b>
Number of Performance Measures Impacted by one or more Exception	75	72	5	10	44	<b>113</b>
% of All Performance Measures Impacted	50%	48%	3%	7%	29%	<b>75%</b>
Number of Performance Measures Impacted by Exceptions	211	137	5	11	50	<b>414</b>
Average Number of Exceptions Per Performance Measure Impacted	4	2.7	2.5	1.6	3.3	<b>3.2</b>

*E&Y Exception Category I:* E&Y identified 53 different exceptions that affected one or more of 75 performance measurements, or 50% of the performance measures reported during the time period evaluated. Ehr Affidavit, Attachment Q. On average, each performance measure affected was affected by four different exceptions. While E&Y states that it tested the accuracy of the corrective actions implemented by the company for the restated March, April and May 2002 data, there has been no assurance provided to indicate that the data months beyond May 2002 no longer contain the data inaccuracies raised by the category I exceptions. February 12, 2003 Tr. at 3385.

*E&Y Exception Category II:* E&Y identified 51 category II exceptions of which none were corrected for the March, April and May 2002 data months E&Y evaluated. Ehr Affidavit, Attachment Q. Mr. Ehr, states that the issues were either related to diagnostic performance measures or that the data needed to perform the restatements was not available and therefore would not be restated for the March-May 2002 data months. Ehr Affidavit, ¶227. However, of the 51 category II exceptions, only 12 diagnostic measures were affected by one or more of these category II exceptions, and 60 out of the 127 parity and benchmark measures were affected by one or more of the category II exceptions. As noted by E&Y, 48% of SBC Illinois' performance measure data for the March, April and May 2002 time period would, if corrected, change the reported results by more than 5% in either direction, or would alter the pass/failure attainment determination. Therefore, SBC Illinois is currently reporting, and will continue to report, inaccurate performance measurement data for the March, April and May 2002 time period for 48% of all performance measures reported.

Ms. Weber avers that we should disregard Mr. Ehr's statement that this proceeding's focus should only be placed upon the data presented for the September-November 2002 time period. The inaccuracies present in the March-May 2002 performance measurement data go, in Ms. Weber's opinion, directly to the heart of SBC

Illinois' data accuracy and reliability problems, and are predictors of possible future problems, if not addressed. In the Department of Justice ("DOJ") showing of PM data submitted by Mr. Ehr, Ehr Affidavit, Attachment B, the company presents one year of its performance measurement results as evidence in this proceeding, and the Category II findings by E&Y show that data inaccuracies exist for almost one half of all performance measures that SBC Illinois reported for the March, April and May 2002 data months in its filing. In addition, while SBC Illinois has asserted that it has taken corrective action on each of the exceptions at some point in time after the March, April and May 2002 data months, many of the corrections E&Y reported were not made until the September, October or the November 2002 results, Attachment B to E&Y Report, and E&Y's verification of SBC Illinois' corrective action occurred for a single monthly only. In the February 12, 2003 hearings E&Y stated that it can provide no assurance that the exceptions noted do not exist in data months after the month it completed its validation. February 12, 2002 Tr. at 3385. Therefore, Ms. Weber opines that some of these exceptions may be present in the three months of results for September – November 2002 that SBC Illinois has presented as evidence of its compliance with the Section 271 competitive checklist in this proceeding.

*E&Y Exception Category III:* E&Y identified two category III exceptions that affect 5 performance measures, none of which are diagnostic measures. Ehr Affidavit, Attachment Q. Specifically these exceptions impact four maintenance and repair performance measures (PM 54, 54.1, 65 and 65.1) and one billing performance measure (PM 14). These category III exceptions still exist in the performance measurement data SBC Illinois reports for the March – May 2002 (corrected but not yet reported or restated). These two exceptions may also exist in the three months of data SBC Illinois submitted in this proceeding as evidence of its compliance. Ehr Affidavit, ¶228, and SBC Illinois Performance Measurements DOJ tracking report provided as Attachment B to Mr. Ehr's affidavit. SBC Illinois has said that the exceptions will be corrected with the December 2002 performance data and data months moving forward but there has been no statement by SBC Illinois that this has in fact occurred and there has been no verification performed by an independent party. Further, during the February 12, 2003 hearings E&Y said they have not been contracted to continue their evaluation work in Illinois. Therefore it appears to Ms. Weber that there is no plan today by SBC Illinois to have an independent party verify that these exceptions have been addressed.

*E&Y Exception Category IV:* E&Y identified 7 category IV exceptions that impact 10 different performance measures, Ehr Affidavit, Attachment Q, (only one of which is a diagnostic performance measure), or approximately 7% of the performance measures for which SBC Illinois is not planning to undertake any corrective actions. Ehr Affidavit, ¶229. Therefore, these exceptions are present to the extent applicable in the data SBC Illinois is reporting for March - May 2002, affecting 10 performance measures, and may also exist in the September, October and November 2002 performance measurement data that SBC Illinois has provided in this proceeding as evidence of its compliance with the 14 point checklist.

*E&Y Exception Category V:* E&Y identified 15 exceptions that affect 44 different performance measures, Ehr Affidavit, Attachment Q, or approximately 29% of the

performance measures for which SBC Illinois has not yet implemented any corrective action. Ehr Affidavit, ¶230. Therefore, these category V exceptions are present in the data SBC Illinois reports for March, April and May 2002 impacting 29% of all performance measures and are most likely also present in the data reported since May 2002; which includes the three months of performance measure data submitted in this proceeding.

In summary, E&Y reported that it found 128 exceptions during its review period. In Staff's analysis of the reported results, each exception affected one or more of 113 out of the 150 performance measures SBC Illinois reports on a monthly basis, or 75% of its performance measures. February 12, 2003 Tr. at 3380. The company has represented that it has addressed a portion of the deficiencies, and it appears E&Y performed limited validation for these corrections. However, assuming this to be true, the 15 exceptions in Category V that affect 29% of the performance measures, and perhaps a number of the Category 4 exceptions, nonetheless remain in the data SBC Illinois reports today. These failings are, in Ms. Weber's opinion, significant and undermine the ability for any party to properly evaluate SBC Illinois' performance measurement data submitted in this proceeding for the affected performance measures.

#### Company's Interpretations of Business Rules

In addition to the exceptions E&Y found during its review, E&Y also reported several interpretations. Interpretations are the definitional liberties that SBC Illinois has taken with specific performance measure business rule documents. Interpretations that SBC Illinois has chosen to apply to the business rules may not be the same as Staff, the Commission or CLECs might apply in its own reading of the business rules and therefore ambiguity in what the performance measure actually reports may be in question. Given the E&Y reported interpretations, it is, in Ms. Weber's view, clear that SBC Illinois has not reported its performance results in compliance with the business rules for the performance measures at issue during the E&Y evaluation period or for the September-November 2002 data submitted by the company as evidence of compliance with Section 271 in this proceeding.

While E&Y conducted its evaluation, SBC Illinois provided E&Y with the interpretations that in SBC's view, E&Y should apply to our approved business rule documents. E&Y did not consider these interpretations provided by the company to be exceptions to compliance with the Business Rules on the part of SBC Illinois. Ms Weber states that while many of these interpretations have since been discussed in the current six-month review proceeding, it does not excuse the fact that the business rule documents were not specific enough to clearly communicate the interpretations that it asked E&Y to apply to the evaluation. In addition, Mr. Ehr's affidavit states that the reasonableness of SBC Illinois' interpretations is something the Commission should decide. Although, during the course of the review, the company did not specifically ask Staff or indeed, us, to review or approve the interpretations it provided to E&Y. Ehr Affidavit, ¶231. In the transcribed meetings, Mr. Ehr noted that a certain number of interpretations were not discussed within or during the six-month review process and

SBC unilaterally decided not to make any clarifications in the business rules for these items.<sup>31</sup>

E&Y reported a total of 50 business rule interpretations (though SBC only recognizes that 48 interpretations were applied, Ehr affidavit, ¶232) that apply to 94 separate performance measures or 63% of the performance measures SBC Illinois reports. Of the 94 performance measures that had interpretations, on average three different interpretations applied to each affected performance measure.

Table 5, below, shows specific statistics on the business rule interpretations E&Y applied to its evaluation.

**Table 5 – E&Y Business Rule Interpretations**

Number of Business Rule Interpretations	<b>50</b>
Number of Performance Measures with One or More Interpretation	<b>94</b>
Percent of Performance Measures with One or More Interpretation	<b>63%</b>
Total Performance Measures Impacted by Interpretations	<b>148</b>
Average Number of Interpretations Per Performance Measure Impacted	<b>3.0</b>

SBC Illinois states that 32 of the interpretations have been agreed upon in the most recent six-month review collaborative, and the remaining interpretations do not require any changes, because the company believes the current procedures it uses to calculate the PM is consistent with the letter of the current business rules. Ehr Affidavit, ¶232. Typically, changes to the business rules are discussed, agreed upon by participants in the six-month review collaborative, approved by us and then implemented on a prospective basis. Therefore, if the 32 interpretations were actually significant enough to require changes to the business rules, and we have not yet formally approved these changes, then they are not in effect today or for the March-May 2002 data report months. If this is the case, then Ms. Weber avers that SBC Illinois has not reported its performance results in compliance with the business rules for the performance measures at issue during the E&Y evaluation period or for the September-November 2003 data submitted by the company as evidence of compliance to the 271 checklist in this proceeding for that matter.

#### Controls Examination

In its Controls Examination, E&Y disclosed: “Certain processes used to generate performance measurements, primarily related to the manual collection and processing of data and computer coding and modifications, did not include certain controls to ensure the accuracy of the reported performance measurements. These control deficiencies contributed to the need to restate certain data and modify certain

---

<sup>31</sup> February 11, 2003 Tr. at 3087-3088.

performance measurements on a prospective basis.” Ehr Affidavit, Attachment S. The two processes that E&Y disclosed that did not include controls to ensure the accuracy of the reported performance measures were:

- (1) Manual Collection and Processing of Data
- (2) Computer Program Coding and Modifications. Id.

During the February 12, 2003 hearings, E&Y further clarified that the deficiencies noted in the Controls Report were caused by SBC Illinois’ (1) initial implementation of the performance measures in the year 2000; (2) implementation of the LASR application as part of the Plan of Record (POR) relates in April 2002; and (3) the execution of certain manual activities required in the monthly performance measure result generation process.

Mr. Ehr states that the control deficiency findings by E&Y have been addressed. Specifically, Mr. Ehr states that the controls have been expanded and enhanced, that new staff personnel have now been trained or that the measures impacted has such low volumes that it is not material. Ehr Affidavit, ¶¶235-239.

During the hearings, E&Y indicated that to the extent the exceptions have been corrected E&Y has tested the control deficiencies and it is comfortable the controls in those areas have been implemented, but it cannot issue an opinion on the change management processes and procedures in place of SBC Illinois because it did not perform enough reviews to render an opinion. Tr. at 3356. Additionally, E&Y stated that it did not do any control testing other than on the corrective actions implemented by the company. Tr. at 3361.

During E&Y’s verification work to ensure that exceptions had been fixed per the statements of SBC Illinois, E&Y found instances where the corrective action wasn’t fully implemented or implemented as intended by the company. Specifically, E&Y saw these types of problems occur for its verification work for 5 exceptions that affected 10 different performance measures. February 12, 2003 Tr. at 3377. Ms. Weber notes that, if SBC Illinois’ controls were solid and working effectively, these types of errors would not occur.

Ms. Weber further opines that a number of Mr. Ehr’s assertions that the control deficiencies have been addressed are unsupported. While controls may have been improved, Ms Weber notes that the efficacy and adequacy of such improvements are not clear. Ms. Weber is not convinced – and states that we should not be convinced -- that SBC Illinois has addressed its performance measurement reporting control deficiencies, until SBC Illinois can consistently report its performance measures with accuracy and integrity on a monthly basis and an independent third party provides verification of this fact. Restatements to correct errors six months after posting data are not, in Ms. Weber’s estimation, acceptable. It is Ms. Weber’s opinion that SBC Illinois should restate results if it finds inaccuracies, as the company has done; however, Ms. Weber also gives it as her opinion that the frequency of restatements and the timing of restatements, well after initially posting performance measure data, point to an inherent problem with SBC Illinois’ process controls within its performance metrics organization.

#### Findings with Respect to the Ernst & Young Evaluation

The findings of E&Y presented above from both E&Y's Compliance Report and E&Y's Control Report indicate to Ms. Weber that there continue to be serious problems with SBC Illinois' reported March-May 2002 performance measurement data (Category II and V exceptions), and there are also 15 Category V exceptions (affecting 29% of the performance measures), the company has not yet corrected that affect the September – October 2002 data months the company has submitted as evidence of compliance in this proceeding. In addition, not all business rule interpretations SBC Illinois represented to E&Y have been discussed with the six-month review collaborative and none of these interpretations have been approved by us to apply to past data months. Therefore, in Ms. Weber's view, SBC Illinois is not reporting its performance measures consistent with the business rules. Finally, E&Y pointed out several control deficiencies it uncovered during its review but there has been no verification that these control deficiencies have been thoroughly addressed. E&Y's findings lead Ms. Weber to conclude that problems remain with SBC Illinois' reported performance measurement data, and that the data submitted by SBC Illinois as evidence of its Section 271 compliance is neither accurate nor reliable.

#### Staff's Reply Position

In her initial affidavit, Ms. Weber reviewed the various ways E&Y classified its exceptions of Material Non-compliance in its Compliance Evaluation by the statements of SBC Illinois regarding the action taken or to be taken by the company for the exceptions in each category. Following are the five classification categories;

- I. Exceptions Corrected and March, April and May 2002 Data was Restated
- II. Exceptions Corrected but March, April and May 2002 Results were Not Restated
- III. Exceptions Corrected but Not Yet Reported or Restated
- IV. Exceptions in which No Corrective Action is Planned by the Company
- V. Exceptions in the Process of being Corrected

Ms. Weber noted that E&Y tested the accuracy of the corrective actions implemented by the company for the restated March, April and May 2002 data but that SBC Illinois has provided no assurance that the data months beyond May 2002 do not contain the data inaccuracies raised by the category I exceptions. Tr. at 3385. Mr. Ehr in his reply affidavit says that Ms. Weber's statement suggests that SBC Illinois, after going to the time and effort to modify systems and procedures, would go to the effort of changing back to the old methods. Ehr Reply Affidavit, ¶¶95-96. This, however, is a significant mischaracterization of Ms. Weber's testimony. The company's processes and controls used to implement and manage changes to its performance measurement systems have not be proven to be effective in preventing new problems from being introduced as changes are made to the performance measure reporting system<sup>32</sup>. Therefore, Ms. Weber questioned whether or not data months beyond May 2002 are in

---

<sup>32</sup> ICC Staff Ex. 31, ¶108.

fact reliable. In addition, BearingPoint's current review of the July and August 2002 data months has found data reporting inaccuracies for the same performance measures E&Y reported under Category I and Category II Exceptions<sup>33</sup>. Therefore, SBC has not demonstrated or proven that Ms. Weber's concerns are without merit.

In her original affidavit, Ms. Weber noted that E&Y identified 15 Category V Exceptions that affected 44 different performance measures or approximately 29% of the performance measures for which SBC Illinois had not yet implemented any corrective action. Ehr Reply Affidavit, ¶¶97. Mr. Ehr states that Ms. Weber's determination was correct with respect to the Category V exceptions, but does not address his analysis that showed the exceptions do not affect overall checklist compliance. Ehr Reply Affidavit, ¶¶99. This is not correct. In Mr. Ehr's initial affidavit he states that there will be no restatement of prior months for 12 of the 15 exceptions because the company does not expect the changes to have a material negative impact on previously reported results. Ehr Initial Affidavit, ¶¶230. Given the Material Non-compliance definition provided by E&Y for determining an exception, Staff Ex. 31.0, ¶¶89, there is no way for Staff to know for certain that the Category V exceptions do not affect checklist compliance. In addition, Mr. Ehr only stated an assertion that the company does not expect the restatements will materially negatively affect the performance measures. However, he does not provide a guarantee or verification of this fact<sup>34</sup>. In addition, the majority of performance measures affected by the Category V exceptions are not diagnostic performance measures. Therefore, the performance measures are part of Staff's analysis of SBC Illinois' checklist compliance.

Also, in response to the Category V Exceptions Mr. Ehr in his reply affidavit states that 8 of the 15 exceptions were addressed with the February 20<sup>th</sup> reporting of January 2003 results. Ehr Reply Affidavit, ¶¶99. Mr. Ehr, however, makes no statement as to whether or not prior data months affected (including the three months of performance data being evaluated in this proceeding) were restated. Nor does the company provide any verification or documentation from Ernst & Young in support of its assertion. For the remaining 7 exceptions not yet implemented by SBC (which affect 13 different performance measures), SBC Illinois asserts that all remaining exceptions will be fixed with the February 2003 results reported on March 20, 2003. Again, SBC fails to make an assertion or statement as to whether or not data months prior to February 2003 data that are affected (including the three months of performance data being evaluation in this proceeding) will be restated.

The company has represented that it has addressed the majority of exceptions reported by Ernst & Young for the March, April and May 2003 time period and it appears E&Y performed limited validation for most of these corrections. However, based upon the reply affidavits of SBC Illinois there is no evidence that 8 of 15 exceptions in Category V do not remain in the performance measurement data prior to January 2003 and it is clear that there are 7 exceptions that still remain in the performance

---

<sup>33</sup> Performance measures 7, 14, 13, 13.1 are named in BearingPoint observation reports 429, 461 and 488. These are just a few of the performance measurements that overlap.

<sup>34</sup> E&Y has indicated that an exception is produced when the results are altered by 5% (up or down) or the party or benchmark pass/fail attainment is changed. February 12, 2003 hearing Tr. at 3369.



measurement data posted today.<sup>35</sup> These failings undermine the ability of any party to properly evaluate SBC Illinois' performance measurement data submitted in this proceeding for the affected performance measures.

The second area E&Y reported upon was its evaluation of the SBC Illinois performance measurement system controls. While the company's controls may have been improved since the E&Y findings were communicated, the efficacy and adequacy of such improvements are not clear. Ms. Weber is not convinced, nor in her view should we be convinced, that SBC Illinois has addressed its performance measurement reporting control deficiencies, until SBC Illinois can consistently report its performance measures with accuracy and integrity on a monthly basis and an independent third party provides verification of this fact. During the hearings E&Y stated that it did not do any control testing other than on the corrective actions implemented by the company. Tr. at 3361. In addition, restatements to correct errors six months after posting data<sup>36</sup> should not be deemed acceptable. The company should restate results if they find inaccuracies, as the company has done. The frequency<sup>37</sup> of SBC Illinois' data restatements and the timing of the restatements, well after initial posting of the performance measurement data, point to the fact that inherent problems with SBC Illinois' process controls within its performance metrics organization have existed and may continue to exist.

#### **e) SBC Illinois Additional Assurances of Reliability are not Sufficient**

##### Staff's Initial Position

In his affidavit, Mr. Ehr asserts that on-going supervision by the Commission, data reconciliation, access to raw data and SBC Illinois' data controls should provide additional assurances of reliability of SBC Illinois performance measurement results. Ehr Affidavit, ¶215.

These three assurances of reliability, which Mr. Ehr states, do not in Ms. Weber's opinion, provide us sufficient confidence that the errors and findings provided by BearingPoint and E&Y can be overlooked, or that the three months of performance measurement data submitted by SBC Illinois in this proceeding are accurate or reliable.

First, Ms. Weber notes that SBC Illinois has stated that our supervision and oversight in the matter of SBC Illinois' performance data has been ongoing and extensive. Ehr Affidavit, ¶293. While oversight is ongoing, Staff's supervision cannot, in Ms. Weber's view, be characterized as extensive. Staff attends six-month review sessions and meetings, and provides direction when needed. However, Staff does not have firsthand working knowledge of the business processes that the performance measures report on, nor do we ourselves have data that it can collect itself to determine whether SBC Illinois' performance measures are being reported accurately. Regulators in general do not have live data to make an independent evaluation as to the integrity,

---

<sup>35</sup> Ehr Reply Affidavit, ¶113.

<sup>36</sup> Appendix D of BearingPoint's February 8, 2003 Written Responses to the February 5, 2003 Hearing.

<sup>37</sup> Id.

accuracy or completeness of the data that a utility such as SBC Illinois reports. Therefore, the ongoing independent third party reviews currently taking place, and their successful completion, are, according to Ms. Weber, crucial in providing us with the assurance that the data SBC Illinois reports on its performance is accurate and reliable.

The next two items Mr. Ehr points to is the data reconciliation process and access to raw data that is available to CLECs. Mr. Ehr indicates that not one CLEC has requested data reconciliation or mini-audits from SBC Illinois despite being permitted to do so under the terms of the performance assurance plan ordered by the Commission in Docket No. 01-0120. Ehr Affidavit ¶¶297-299. Contrary to the statement of Mr. Ehr, Ms. Weber notes that the Docket No. 01-0120 performance assurance plan does not allow for mini-audits to occur while a review or audit -- like the one being conducted by BearingPoint -- is ongoing. Specifically, the language in Section 6.4.2 of the 01-0120 Remedy plan, which is currently in effect, states that mini-audits may not be performed, conducted or requested while the OSS third-party test, or an Annual Audit is being conducted. Ehr Affidavit, Attachment Y at 9.

Lastly, Mr. Ehr states that although solid to begin with, SBC Illinois' internal data controls have been further enhanced and should provide additional assurance of reliability. Ehr Affidavit, ¶292. Ms. Weber observes that the record in this proceeding does not bear out this statement. As discussed in this affidavit, both BearingPoint and E&Y have pointed out several areas of concern or failing with respect to SBC Illinois' data controls. Until the deficiencies are addressed, and the reviews are successfully completed, Ms. Weber states that we should not accept the contention that SBC Illinois internal controls today provide assurances of data reliability now or for the future.

#### Staff's Reply Position

Mr. Ehr's reply affidavit continues to assert that on-going supervision by the Commission, data reconciliation, access to raw data and SBC Illinois' data controls should provide additional assurances of reliability of SBC Illinois performance measurement results. Ehr Reply Affidavit, ¶186. Mr. Ehr does not provide any additional information regarding these points.

Accordingly, these three assurances of reliability, as noted in Ms. Weber's initial affidavit, Staff Ex. 31.0, ¶111, does not inspire sufficient confidence that the errors and exceptions found by BearingPoint and E&Y regarding SBC Illinois performance measurement systems and reporting can be overlooked, or that the three months of performance measurement data submitted by SBC Illinois in this proceeding are accurate or reliable at this time.

#### **f) Commission Analysis And Conclusion**

The Staff asserts that SBC Illinois' performance measurement data is not reliable and should not be used as evidence of SBC Illinois' compliance with the Section 271 14-point checklist. Moreover, the Staff urges us not to rely upon SBC Illinois' performance measurement data, which is the input to SBC Illinois' performance remedy

plan, to demonstrate or ensure future compliance by the company.

We concur with Staff. Specifically, we find that at this time SBC Illinois' has not demonstrated its performance measurement data is reliable and this data is used for both Section 271 compliance, and for anti-backsliding purposes.

The Staff has recommended remedial measures, as follows:

(1) The Commission not make a favorable Section 271 recommendation prior to successful completion of the BearingPoint Performance Metrics review;

(2) In the alternative, if this Commission determines it will provide a positive Section 271 recommendation to the FCC prior to the conclusion of the BearingPoint Performance Metrics review, then the Commission should make its approval contingent upon the requirement that SBC Illinois will address all deficiencies raised by BearingPoint in the metrics review and commit to successfully conclude the BearingPoint metrics review no later than November 2003.

(3) The Commission should condition any positive Section 271 recommendation to the FCC upon SBC Illinois' commitment to conduct a yearly audit of its performance measurement data, data collection, data retention and processing controls to demonstrate and prove that the performance measurement data remains reliable over time. The Commission should approve the auditor and audit test plan for the annual audits committed to by the company.

We find that the Staff's proposed remedial measures with respect to the accuracy and reliability of SBC Illinois performance measurement data are reasonable and necessary. Accordingly, we order them undertaken.

## **V. Checklist Item 1 – Interconnection/Collocation**

### **A. Phase I Compliance Issues**

#### **1. Collocation**

In paragraph 287 of the Phase I Interim Order the Commission agreed with Staff and stated: "SBC should comply with its tariff and the Section 13-801 Order (Docket 01-0614) and that such compliance should be monitored and confirmed during Phase II of this proceeding."

This issue deals specifically with the types of equipment for interconnection or access to network elements that SBCI is required to allow the competitive local exchange carriers (CLECs) to install in SBCI's premises. In Docket 01-0614, the Commission ordered that SBC Illinois must allow CLECs to collocate "any type of equipment for interconnection or access to network elements" at its premises "on just,

reasonable and non-discriminatory rates.”<sup>38</sup> Accordingly, the Commission directed SBCI to file a compliance tariff in accordance with its Order.<sup>39</sup>

Therefore, the compliance issue in the instant docket is whether SBC Illinois has complied with the Commission’s Order by allowing “CLECs to collocate any type of equipment for interconnection or access to network elements at its premises on just, reasonable and non-discriminatory rates.”

In response to Staff’s data request SBCI asserted that it has “completed 108 collocation projects from July 1, 2002 through January 24, 2003” and continues to meet the state collocation requirements.<sup>40</sup> In addition, SBC Illinois stated that it “has not rejected any collocation project applications since June 11, 2002 on the basis of the CLEC’s equipment.”<sup>41</sup>

No CLEC has indicated that SBCI’s performance regarding the processing of collocation applications or the installation of collocation equipment is a problem. Based on SBCI’s information, and the CLECs’ silence regarding this matter, it appears that SBC Illinois has met the requirements of the collocation tariff as mandated by the ICC’s Order in Docket 01-0614.

## **2. Commission Analysis And Conclusion**

We concur with Staff that SBC Illinois has met the requirements of the collocation tariff as mandated by the ICC’s Order in Docket 01-0614.

### **B. Performance Measurement Data Analysis**

Checklist item 1 includes interconnection and collocation, and encompasses the following PMs: 70, 71, 73, 74, 75, 76, 77, 78, 107, 108, and 109.

#### **1. Interconnection Trunks**

PMs related to interconnection trunks – 65, 69, 70, 71, 73, 74, 75, 76, and 78. The data indicates that SBC Illinois has passed these applicable PMs. For PM 77, there was insufficient data for all sub-measures to make a determination.

PM 65 and PM 69 indicate that the CLECs receive high quality post provision interconnection trunk service and that interconnection maintenance and repair service from the Company is meeting parity standards.

---

<sup>38</sup> See 01-0614 para. 41.

<sup>39</sup> See 01-0614, para. 612.

<sup>40</sup> See Confidential Schedule 47.02, Ameritech Response to Staff Data Requests AOO 1.0; Phase 1 Compliance Rebuttal Affidavit of Scott J. Alexander on behalf of SBC Illinois, para. 18.

<sup>41</sup> Id.

### **a) Maintenance and Repair – Analysis And Recommendation**

Dr. James Zolnierек, the Manager of the Policy Department in the Telecommunications Division of the Illinois Commerce Commission, analyzed the data submitted by SBC Illinois witness Mr. Ehr as it pertains to the company's compliance with Checklist Item 1 – Interconnection. ICC Staff Ex. 32.0 at ¶¶ 1, 4. Dr. Zolnierек noted that the PMs measuring maintenance and repair performance for Interconnection Trunks are PM 65-16 (Trouble Report Rate – Interconnection Trunks), PM 65.1-16 (Trouble Report Rate Net of Installation and Repeat Reports – Interconnection Trunks), and PM 69-16 (Percent Repeat Reports – Interconnection Trunks). ICC Staff Ex. 32.0 at ¶ 44. Dr. Zolnierек testified that these PMs indicate that the CLECs receive high quality post provision interconnection trunk service and that interconnection maintenance and repair service from the Company is meeting parity standards. *Id.*

Staff recommends, based on the performance data submitted by the Company, that the Commission should find that the Company is providing interconnection trunk transport maintenance and repair service in accordance with the requirements of Section 271(c)(2)(B)(i) of the Telecommunications Act of 1996 ("1996 Act"). *Id.* at ¶ 45.

### **b) Interconnection Trunk Performance**

#### **(1) Staff's Initial Position**

Interconnection Trunk Performance Measurements include: PM 70(Percent trunk blockage); PM 71 (Percent local common transport trunk group blockage); PM 73 (Missed due dates – interconnection trunks), PM 74 (Average delay days for missed due dates); PM 75 (Percent company caused missed due dates > 30 days), PM 76 (Average trunk restoration interval); PM 77 (Average trunk restoration interval for service affecting trunk groups); and PM 78 (Average interconnection trunk installation). Attachment A to the January 17, 2003 Affidavit of James D. Ehr provides a detailed breakdown of the Trunk Performance Measurements.

There are 32 performance sub-measures associated with interconnection trunks. The data provided by SBC (James D. Ehr Affidavit of January 17, 2003, Attachments A and B) indicate that the company has passed on 9 sub-measures, failed on none, and reported insufficient or no data available on 23 sub-measures. With the data provided, the Staff concludes that SBC Illinois provides adequate service to the CLECs for interconnection trunks.

#### **(2) Staff Reply Position**

Inasmuch as no further evidence has been produced with respect to this issue, in the absence of contrary evidence, Staff remains convinced that SBCI provides adequate service for the 32 performance sub-measures associated with interconnection trunks.

## 2. Collocation

PMs related to collocation – 107 and 109 – indicate that SBC Illinois has passed these applicable PMs. For PM 108, there was insufficient data for all sub-measures to make a determination. ICC Staff Ex. 35.0 ¶¶ 16-21.

### PM 107

1. Performance Measurement (PM) 107 examines the Percent of Missed Collocation Due Dates. It refers to the percentage of SBC Illinois caused missed due dates for CLEC collocation projects. The measurement has no exclusion.<sup>42</sup>
2. There are nine sub-measures within PM 107 and according to the Performance Measurement Tracking Report (DOJ) data provided by SBC Illinois for the three months under review in this proceeding, there was no activity in five sub-measures: PM 107-02, PM 107-03, PM 107-05, PM 107-06 and PM 107-07. Thus, no data is available for those five sub-measures.<sup>43</sup>
3. The SBC Illinois' Performance Measurement Tracking Report (DOJ) data, there were three Caged collocation projects between September and November 2002, PM 107-01.<sup>44</sup> Also, there were four Cageless collocation projects between September and November 2002 for PM 107-04.<sup>45</sup> Further, there were sixty-six Augments to Physical collocation projects between September and November 2002, PM 107-08.<sup>46</sup> While there were two Augments to Virtual collocation projects from September to November 2002, PM 107-09.<sup>47</sup>
4. The data within the Performance Measurement Tracking Report (DOJ) data and Illinois Performance Measures – Hit or Miss Report –SBC Illinois - Checklist Item One - *Interconnection* for PM 107-01, PM 107-04, PM 107-08 and PM 107-09 sub-measures showed that SBC Illinois met the PM standards 1005 of the time for all three months.<sup>48</sup> Thus, SBC Illinois meets the 95% benchmark standard. Conclusively, the overall performance result for each of the four sub-measures is a pass.

### PM 109

---

<sup>42</sup> Ameritech Tariff, Original Sheet No. 320.

<sup>43</sup> Attachment JDE-B, p. 286-288.

<sup>44</sup> Attachment JDE-B, p. 286

<sup>45</sup> Id.

<sup>46</sup> Id. at 288

<sup>47</sup> Id.

<sup>48</sup> Attachment JDE-D, p. 1

5. Performance Measurement 109 examines the Percent of Requests Processed Within the Established Timelines.<sup>49</sup> It refers to the percentage of requests for collocation facilities processed by SBC Illinois within the established timelines. The measured timelines exclude weekends and holidays.<sup>50</sup> PM 108 has four submeasures.
6. According to the Performance Measurement Tracking Report (DOJ) data, PM 109-01 had 2 requests/transactions<sup>51</sup>, PM 109-03 had 101 requests/transactions<sup>52</sup>, and PM 109-04 had six requests/transactions.<sup>53</sup>

The data within the SBC Illinois' Performance Measures – Hit or Miss Report - SBC Illinois - Checklist Item One - *Interconnection* data, showed that all requests/transactions PM 109-01 and PM 109-04 were completed on time.<sup>54</sup> In addition, the data related to PM 109-03 shows that 100 out of 101 requests/transactions were processed within the established timelines, a 97.92% completion.<sup>55</sup> SBC Illinois overall performance result for each of PM 109 sub-measures was well over 90% parity benchmark. Therefore, SBC Illinois passes PM 109.

41. It is Staff's determination that SBC Illinois' reported performance relative to checklist item 1 is satisfactory.

## **VI. Checklist Item 2 - Access to Network Elements - OSS**

### **A. Phase I Compliance:**

#### **1. Line Loss Notifications**

##### **a) Staff's Initial Position**

Staff witness Nancy B. Weber directs out attention to the Phase I Interim Order, in which we stated, in relevant part, that:

It is generally agreed by all parties that the Commission's final review of line loss performance should come in Phase II. The CLEC's testimony indicates that there have been persistent and significant problems, which may not be resolved at this time, and indicates further, that the issue of an adequate LLN is material. For its part, Staff maintains, that AI has not yet

---

<sup>49</sup> Ameritech Tariff, Original Sheet No. 325.

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> Id.

<sup>54</sup> Id.

<sup>55</sup> Id.

satisfactorily proven that the LLN problem is fully resolved and it attaches a number of remedial actions to be put into effect at this juncture. Staff's recommendations are reasonable and Ameritech's actual implementation of those remedial actions (found on pages 5-8 of Appendix A attached to Staff's Reply Brief), will be given substantial weight when the Commission makes its final analysis of this matter in Phase II.

#### Phase I Order, ¶¶694

Staff asserts that, in its Phase I Reply Brief, it recommended SBC Illinois take specific action with respect to the operational aspects of line loss notices as well as its line loss performance measurement, MI 13. The Staff avers that, in general, SBC Illinois has complied with the majority of Staff's Phase I recommendations, all of which, the Staff notes, we found to be reasonable in our Phase I Order. However, the Staff remains unconvinced that further line loss notification operational problems will not occur, given the nature of the problems that have been seen to date.

Ms. Weber notes that SBC Illinois witness Mark Cottrell, in his Phase I Compliance Affidavit indicates that the company released Accessible Letters CLECAM02-122 and CLECAM02-123 on November 12 and 13, 2002 communicating the occurrence of a new line loss notification incident. Cottrell Phase I Compliance Affidavit, ¶¶8. In addition, Ms. Weber points out that, during the transcribed meetings in the proceeding on February 13, 2003, Mr. Cottrell indicated there were additional line loss notification problems in the month of December 2002 and January 2003. Tr. at 3809, 3851-3852. Mr. Cottrell states that the SBC cross-functional team will be maintained at least until June 20, 2003. Cottrell Phase I Compliance Affidavit, ¶¶13.

However, the Staff contends that there still appear to be intermittent issues arising with either the generation and or delivery of line loss notifications, and that these issues adversely affect CLECs and their end users. Accordingly, Ms. Weber recommends that SBC Illinois' cross-functional team remain in place to review line loss notifications until SBC Illinois provides six months of line loss notices without uncovering any new problems and without any of the known problems re-emerging. Moreover, since, there have been intermittent line loss notification problems even after SBC Illinois indicated all issues were addressed, Ms. Weber's opinion is that the Commission cannot be assured that line loss notification problems will not recur, and that new ones will not arise, unless it monitors SBC Illinois' performance in this area over a period of time.

While Ms. Weber agrees that the operational and procedural changes SBC Illinois has put in place for line loss notices appear to have reduced the number of incidents with line loss notices, she notes that whenever there is a problem providing line loss notices to CLECs, SBC Illinois is providing discriminatory treatment to CLECs. This, Ms. Weber notes, is because SBC Illinois' billing systems do not rely upon these line loss notices to stop billing its own end customers, but CLECs billing systems do rely



upon line loss notices for this purpose<sup>56</sup>. Therefore, it is the Staff's contention that issues related to line loss notifications should not be taken lightly, and, as we stated in our Phase I Order the "issue of an adequate line loss notification is material[.]" Phase I Order, ¶¶694.

As the Staff notes, in our Phase I Order, we found that Staff's suggested remedial actions were reasonable, and therefore we directed SBC Illinois to modify the calculation, business rules and exclusions associated with performance measure MI 13. In Phase I, we found that the company specifically needed to alter MI 13 to accurately capture how long it takes SBC Illinois to send a loss notification and to reflect the fact that MI 13 does not include loss notifications that SBC never sends. Phase I Order, ¶¶521. Specifically, we directed SBC Illinois to implement, within 45 days of issuance of the Phase I Order (which would be March 23, 2003), the modifications Staff recommended that SBC Illinois make with respect to performance measure MI 13. Phase I Order, ¶¶522-525, 528.

The Staff notes that Mr. Cottrell states that SBC Illinois worked with industry participants through the performance measure six-month review process to make revisions to the line loss notification performance measure (MI 13) and that the parties reached consensus regarding the appropriate modifications. Cottrell Affidavit, ¶¶12. The Staff further notes that SBC Illinois witness James Ehr states that a second measure of line loss notification timeliness, assessing the average delay for any line loss notices that were not sent within the new standard, was also created; MI 13.1. Ehr Affidavit, ¶¶30.

Ms. Weber agrees that the collaborative reached consensus on the definitional changes to performance measure MI 13, and that these changes generally meet the requirements of the *Phase I Order*. However, in Ms. Weber's opinion, SBC Illinois has not agreed to Staff's recommendation that performance measure MI 13 be assigned a medium weight for remedy plan purposes. Staff contends that our Phase I Order requires this. Accordingly, in Ms. Weber's opinion, SBC cannot be said to be in full compliance with our Phase I Order in this regard since the PM changes have not yet occurred and the medium remedy weight has not yet been applied to the performance measurement.

Ms. Weber observes that, in our Order in Docket No. 01-0120, we ordered that remedied performance measures reflect a weighting based on importance, such as impact on end users. Order, Docket No. 01-0120 at 47 (Ameritech's Position, at 48). As Ms. Weber notes, the Staff, in Phase I of this proceeding, recommended that MI 13 be given a medium weighting, since it primarily protects the CLECs reputation. Staff argued that a medium weighting is equitable given that the performance measure is not a sub-measure, and missing or inaccurate line loss notices affect both the end user and the CLECs reputation. Ms. Weber states that the benefit of making MI 13 a "medium" remedied measure is that it will encourage SBC Illinois to work towards preventing any backsliding on this performance measure and therefore on delivering accurate and timely line loss notices to CLECs.

---

<sup>56</sup> IL Docket, 02-0160.

Staff notes that SBC Illinois has agreed to include MI 13 as part of its remedy plan, but has only agreed to a low weighting level. However, as we found, in our Order in Docket No. 02-0160, that SBC Illinois' practices with respect to line loss notifications to be discriminatory and anti-competitive, it is Ms. Weber's opinion that the Commission should require SBC Illinois to make performance measure MI 13 a remedied performance measure of medium weight as recommended and found reasonable by this Commission in the Phase I Order.

Ms. Weber notes that SBC Illinois does not plan to implement the changes to performance measure MI 13 or new performance measure MI 13.1 until March 2003 data which would be in April 2003.<sup>57</sup> As we explained in our Final Order of Docket 02-0160 and in Phase I of this proceeding, performance measure MI 13, which is currently being reported, does not accurately capture SBC Illinois' performance in its delivery of line loss notifications. Therefore, we still lack an accurate way of monitoring SBC Illinois' generation and delivery of line loss notifications to CLECs until the changes to MI 13 and the new MI 13.1, as agreed to by the six-month review collaborative, are implemented<sup>58</sup>. In addition, MI 13 will not become a remedied performance measure until the changes to the measure are implemented<sup>59</sup>. Therefore, Ms. Weber recommends that the Commission direct SBC Illinois to make the necessary changes to its line loss notifications performance measures prior to this Commission providing a positive Section 271 recommendation to the FCC.

Ms. Weber further recommends that we should require in our Phase II Order that SBC Illinois' cross functional team remain in place and continue to review line loss notifications until SBC Illinois provides six months of line loss notices without uncovering any new problems and without any of the existing problems re-emerging. In addition, Ms. Weber recommends that SBC Illinois should be required make performance measure MI 13 a remedied measure of medium weight and all changes to performance measure MI 13 and MI 13.1 should be implemented by SBC Illinois prior to this Commission making a positive Section 271 recommendation to the FCC.

Ms. Weber recommends that, if SBC Illinois were to implement these changes within 45 days of the Phase I Order (which would be March 23, 2003) as we found to be reasonable, SBC Illinois would be able to respond with its intention to rectify the Phase I compliance items that it has failed to address in its rebuttal filing currently scheduled for March 3, 2002.

#### **b) Staff's Reply Position**

The Staff observes that, in her initial Affidavit in this proceeding, Staff witness Nancy B. Weber requested that SBC Illinois respond with its intention to rectify the following deficiencies in its rebuttal filing:

---

<sup>57</sup> February 13, 2003 Tr. at 3798.

<sup>58</sup> February 11, 2003 Tr. at 2954.

<sup>59</sup> Id.

(a) SBC Illinois should make performance measure MI 13 a remedied measure of medium weighting.

(b) All changes to performance measure MI 13 and MI 13.1 should be implemented by SBC Illinois prior to this Commission making a positive Section 271 recommendation to the FCC, since this Commission found that it was reasonable for the company to implement these changes within 45 days of the Phase I Order (which would be March 23, 2003).

(c) The Commission should require SBC Illinois to keep its cross functional team in place until SBC Illinois provides six months of line loss notifications to CLECs without uncovering any new problems and without any of the old problems re-emerging.

The Staff continues to believe that performance measure MI 13 should be a remedied performance measure of medium weight. In his reply affidavit Mr. Ehr states that when SBC Illinois implements the revised PM MI 13, that it will also change the remedy level from “Low” to “Medium”. Ehr Reply Affidavit, ¶241. Ms. Weber believes that SBC Illinois has committed to do as we requested in the Phase I Order, she expects SBC Illinois in its surrebuttal testimony to definitively state that it plans to do the following two items:

Upon implementation of the revised performance measure MI 13, scheduled for April 20, 2003 reporting, SBC Illinois will make the weight of MI 13 Tier 1 and Tier 2 remedy levels “Medium”;

SBC Illinois will file revised tariff pages with this Commission for performance measure MI 13 reflecting the “Medium” Tier 1 and Tier 2 assignments, so the effective date of the tariff coincides with the implementation date of the performance measurement changes.

The Staff continues to hold the view that changes to MI 13 and implementation of MI 13.1 should occur prior to our issuance of a positive Section 271 recommendation. Ms. Weber notes that SBC Illinois does not plan to implement the changes to performance measure MI 13 and the new implementation of performance measure MI 13.1 until March 2003 data, reported on April 20, 2003.<sup>60</sup> Therefore, Ms. Weber contends that we still lack an accurate way of monitoring SBC Illinois’ generation and delivery of line loss notifications. In addition, Ms. Weber observes that MI 13 will not be a remedied performance measure until the changes to the measure are implemented<sup>61</sup>. Therefore, she recommend that we verify the changes to the performance measures are indeed in place prior to providing a positive Section 271 recommendation to the FCC. Once the changes are implemented, Ms. Weber is of the belief that the performance measures should allow us to effectively monitor the company’s performance in delivering line loss notifications to CLECs.

The Staff notes that SBC witness Mark Cottrell, in his reply affidavit states that the company has committed to keep the line loss cross functional team in place until at

---

<sup>60</sup> February 13, 2003 Tr. at 3798.

<sup>61</sup> Id.

least Jun 30, 2003. Cottrell Reply Affidavit, ¶¶30. Mr. Cottrell states that after that date monitoring will continue but will be transitioned to the various organizations responsible for daily wholesale order processing and that the company's commitment to closely monitor the line loss process would continue and remain a high priority for the company. Id.

The Staff points out that SBC Illinois has made no further commitments in this proceeding to make us believe that line loss notification problems will not occur in the future. Indeed, the Staff draws our attention to Mr. Cottrell's statement that the two line loss notifier delivery incidents it is aware of occurring in the last three months were traceable to changes being performed at the request of CLECs, and that they were rectified shortly after they were brought to the attention of the company. Cottrell Reply Affidavit, ¶¶28. This statement, avers Ms. Weber, is troubling for two reasons. First, the company places blame for the incident upon the affected CLEC, when in reality SBC Illinois caused the errors. Second, the issues were not proactively identified by SBC Illinois. It appears SBC was only aware of the issues after they were brought to its attention by the affected CLEC. Therefore Ms. Weber notes that having the cross functional team in place does not provide us with as much reassurance that the errors and issues are being caught and corrected by SBC Illinois when line loss incidents occur as had originally been thought. Regardless of whether the cross functional team remains in place, or monitoring is moved to the organizations responsible for daily wholesale order processing, Ms. Weber remains convinced that the monitoring of the line loss notifications by the company will most likely remain the same. Therefore, Staff makes no further recommendation regarding the cross functional team and accepts the plan that SBC Illinois outlined in its rebuttal testimony. Id. ¶¶30. However, based upon this realization of SBC Illinois' monitoring of line loss notifications, Ms. Weber considers it even more important that the modified MI 13 and new MI 13.1 line loss performance measurements be implemented before we provides a positive Section 271 recommendation to the FCC. The performance measures will provide us with a means by which to effectively monitor the company's performance in delivering line loss notifications. Ms. Weber considers the current business rule for performance measure MI 13 to fall woefully short, and cannot be relied upon to demonstrate the company's performance in this area. Staff Ex. 31.0, ¶¶15.

Mr. Cottrell in his reply affidavit included schedule MJC-4 outlining an internal improvement plan it will undertake at the direction of the Michigan PUC. Specifically Mr. Cottrell lists five main provisions of the improvement plan and states that the process improvements in Michigan will directly benefit CLECs in Illinois. Cottrell Reply Affidavit, ¶¶51. Ms. Weber opines that, if these improvements will also apply to processes affecting Illinois transactions and Illinois CLECs, then the commitments of the company with respect to the line loss improvement plan it is planning to implement in Michigan should also be made in Illinois. The company's commitment in Illinois should also include specifics for providing periodic updates to the Commission in meeting its internal line loss improvement plan. Ms. Weber invites SBC Illinois to respond with its agreement to make these commitments in its surrebuttal testimony.

In a recent FCC filing, it was noted that the current implementation of performance measure MI 13 does not include any of the line loss notifications

generated due to winback situations<sup>62</sup>. A winback is when SBC Illinois returns a previous customer that had left and gone to a CLEC to SBC Illinois. Ms. Weber understands that at this point in time the majority of lost CLEC customers are due to the SBC Illinois winback scenario. Ms. Weber further observes that this deficiency of performance MI 13 was not discussed during the last six-month review nor was it discussed during Phase I of this proceeding. Accordingly, Ms. Weber is not certain whether this shortcoming will also be reflected in the modified performance measure MI 13 and the new performance measure MI 13.1 when implemented on April 20, 2003. Therefore, Ms. Weber requests that SBC Illinois confirm in its surrebuttal testimony whether all line loss notifications issued to CLECs will be included in the MI 13 and MI 13.1 line loss performance measurements that SBC Illinois plans to implement on April 20, 2003; including all line loss notices generated due to SBC Illinois winback scenarios.

### **c) Commission Analysis And Conclusion**

In our Phase I Interim Order, we found Staff's recommendations regarding line loss notification to be reasonable, and ordered that they be adopted. The record in Phase II demonstrates clearly that SBC Illinois has not yet implemented all of Staff's recommendations with respect to line loss notifications.

In its Phase II affidavits, Staff recommends that we direct SBC Illinois to adopt, the following with respect to line loss notification:

(1) SBC Illinois should make line loss performance measure MI 13 a remedied measure of medium weighting for both tier 1 and tier 2 payments;

(2) SBC Illinois should include all line loss notifications issued to CLECs in its line loss performance measures MI 13 and MI 13.1; including all line loss notices generated due to SBC Illinois winback scenarios. Winback scenarios are not currently included in performance measure MI 13.

(3) All changes to line loss performance measure MI 13 and the new line loss performance measure MI 13.1 should be implemented by SBC Illinois prior to this Commission making a positive Section 271 recommendation to the FCC, since this Commission found that it was reasonable for the company to implement these changes within 45 days of the Phase I Order (which would have been March 23, 2003). SBC Illinois has responded that it plans to meet this recommendation on April 20, 2003 when performance measurement data is posted for March 2003.

(4) SBC Illinois should file revised Illinois tariff pages with this Commission for the changes it must make to performance measure MI 13 and MI 13.1 based upon this Order so the effective date of the tariff coincides with the implementation date of the performance measure changes.

(5) SBC Illinois should provide this Commission with periodic updates on

---

<sup>62</sup> FCC Docket No. 03-16, March 4, 2003 AT&T Filing, Joint Reply Declaration of Karen W. Moore, Timothy M. Connolly, and Sharon E. Norris on Behalf of AT&T Corp., ¶13.

its implementation of its Line Loss notification improvement plan it filed with the Michigan Commission and committed to implement and which in this proceeding SBC Illinois has indicated the improvement plan will also benefit Illinois.

(6) The Commission should require SBC Illinois to closely monitor the line loss notifications it provides to CLECs until SBC Illinois provides six months of line loss notifications to CLECs without uncovering any new problems and without any of the existing problems re-emerging;

The issue of line-loss notification is a contentious one, and its proper resolution is, in our view, vital to the development of a competitive market. We note, further, that we have found SBC Illinois' practices with respect to line loss notification to constitute an impediment to competition. Accordingly, we find the Staff's recommendations regarding line loss notification to constitute a reasonable and effective way of monitoring this lingering problem, and we direct SBC Illinois to implement them.

## **2. Tariff and Interconnection Agreement Opt-In**

### **a) Staff's Initial Position**

#### **(1) Commission Ordered Action**

The Commission's Phase I Interim Order in this proceeding directs the Company to demonstrate that:

The UNE offerings contained in its existing interconnection agreements and tariffs can generally be opted-into without unnecessary restrictions.

See ICC Staff Ex. 32.0 at ¶ 129.

#### **(2) Company Compliance Filing**

To address the Commission's concerns Mr. Alexander, the Company compliance affiant for this issue, states that CLECs can "'MFN' into UNE provisions (and legitimately related terms) contained in an approved and effective interconnection agreement in Illinois, or incorporate the relevant tariff provisions into its ICA." See ICC Staff Ex. 32.0 at ¶ 130. Staff noted that Mr. Alexander offers evidence that CLECs have been able to obtain through the opt-in process some, but presumably not all, UNE provisions (and legitimately related terms) contained in approved and effective interconnection agreements in Illinois. *Id.* Staff also noted that Mr. Alexander does not offer any evidence that CLEC's have been able to incorporate tariff provisions into interconnection agreements. *Id.*

Staff further observes that the Company clarified its opt-in policies in response to Staff data requests. Based upon this clarification, Staff understands the Company's policy to be as follows:

Requesting carriers, with or without existing effective interconnection agreements, may include, by reference, SBC Illinois tariffed UNEs, inclusive of all UNE rates, terms, and conditions, contained in such tariffs, into their interconnection agreements without restriction. When such tariffs are included by reference the agreement will automatically incorporate any modifications to the tariffed rates, terms, and conditions for the referenced UNEs.

Requesting carriers, with or without existing effective interconnection agreements, may include, UNEs, inclusive of all UNE rates, terms, and conditions contained in existing effective interconnection agreements, into their interconnection agreements with the single restriction that the CLEC must also include any legitimately related terms.

ICC Staff Ex. 32.0 at ¶ 131. Mr. Alexander further explained the Company policy as it applies to inclusion of tariffed UNE rates, terms, and conditions to be that the Company will permit carriers to reference SBC Illinois tariffed UNEs in their interconnection agreements, but the Company may not permit UNE rates, terms, and conditions language from the tariff to be directly included into an agreement. *Id.* at ¶ 132.

### **(3) Analysis and Recommendation**

Staff explained that if its understanding of the Company's opt-in policies is correct, then the policies articulated by Mr. Alexander are consistent with the Commission directive in its Phase I Interim Order. ICC Staff Ex. 32.0 at ¶ 133. If followed, the Company policies articulated by Mr. Alexander permit CLECs in Illinois to include UNE rates, terms, and conditions that this Commission and the FCC have ordered the Company to provide into their interconnection agreements. *Id.* In Staff's view, the Company position that it may not agree to include language from the tariff into its agreement does not prevent CLECs from obtaining UNE rates, terms, and conditions that the Commission has required the Company to provide. *Id.* By including tariff terms by reference, interconnection agreements will as a general matter automatically update to account for changes to the tariff ordered or permitted to go into effect by the Commission *Id.*

While Staff finds the Company policies articulated by Mr. Alexander to be consistent with the Commission directive in its Phase I Interim Order, Staff also found that articulation of a policy does not ensure that such policy is being followed or will continue to be followed. ICC Staff Ex. 32.0 at ¶ 134. Therefore, Staff recommended that the Commission require the Company to provide a written commitment to abide by the opt-in policies described above as a precondition for receiving a positive Section 271 recommendation from the Commission. Staff explained that such a commitment will ensure that the Company is making available to all carriers in Illinois those UNE rates, terms, and conditions that it has presented as proof of its compliance with Section 271. *Id.*

## **b) Staff's Reply Position**

### **(1) Analysis of Company's Response**

With respect to Staff's recommendation, Mr. Alexander indicates the Company will not agree to commit in writing to the policies it asserts it will follow in order to comply with Section 271. ICC Staff Ex. 44.0 at ¶ 27. Staff notes, however, that Mr. Alexander proposes to post opt-in language to its CLEC Online website that clarifies the Company's policies regarding opt-in. *Id.*

Staff agreed that the opt-in requirements that are imposed on the Company by state and federal law change from time to time. ICC Staff Ex. 44.0 at ¶ 28. Such changes may require that the Company change its opt-in policies. Therefore, Staff concurred with Mr. Alexander that a binding "written commitment", as proposed in its Dr. Zolnierrek's initial affidavit, may not be the most appropriate mechanism for ensuring that the Company follows 271 compliant opt-in policies. *Id.* However, Staff recommended that the Company provide the Commission with assurance that it has committed to follow Section 271 compliant opt-in policies and that it will not change its opt-in policies absent changes in state or federal law that change the Company's Section 271 opt-in requirements. *Id.* Thus, Staff concluded that the Company's proposal to include its opt-in policies on its CLEC Online website, if implemented, resolves this issue by providing CLECs and the Commission a vehicle to monitor the Company's opt-in policies and address any 271 compliance issues that may arise regarding these policies. *Id.*

### **(2) Staff's Recommendation**

Considering the arguments made by Mr. Alexander in his rebuttal affidavit, Staff now recommends that the Commission find that the Company's proposal to post its opt-in policies on its CLEC Online website comports with the directives in the Commission's Interim Order. ICC Staff Ex. 44.0 at ¶ 29. However, to ensure that Staff's recommendation and the Commission's decision is informed, Staff also recommended that the Company submit in its surrebuttal affidavits the proposed language it intends to make available to CLECs on the Company's CLEC Online website. Provided this language clearly and accurately explains the opt-in policies articulated by Mr. Alexander in this proceeding, Staff recommended that the Commission consider this issue resolved through implementation of the Company's proposal. *Id.*

## **c) Commission Analysis And Conclusion**

The Staff indicates that, based upon its interpretation of SBC Illinois' opt-in policies, the company's opt-in policies are consistent with the Commission's Phase I directive. Furthermore, the company has agreed to post and maintain a statement explaining its opt-in policies to its CLEC Online website, which will provide the Commission and CLECs a vehicle to monitor the Company's opt-in policies and address any 271 compliance issues that may arise regarding these policies. Surrebuttal



Phase 1 Compliance Affidavit of Scott J. Alexander on Behalf of SBC Illinois ¶ 5. Based upon the Staff's opinion, and the company's undertaking to post and maintain a statement explaining its opt-in policies, we consider this issue satisfactorily resolved.

### **3. EEL Performance Measurement**

#### **a) Staff's Initial Position**

##### **(1) Commission Ordered Action**

Staff noted that the Commission's Phase I Interim Order in this proceeding directs the Company to provide information that explains how the Company does and will measure provisioning intervals and service quality for its EELs products and requests Staff to assess this information. See ICC Staff Ex. 32.0 at ¶ 135.

##### **(2) Company Compliance Filing**

In response, the Company submitted the testimony of Mr. Ehr -- the Company compliance affiant for this issue -- who explained that the Company currently measures provisioning of EELs through a number of its current performance measurements and that the Company will measure provisioning of EELs with further specificity in the future. ICC Staff Ex. 32.0 at ¶ 136.

Staff notes that according to Mr. Ehr, the Company currently categorizes its EEL combinations according to the loop component of the EEL and then combines EELs provisioning information with its stand-alone loop information in various performance measures. ICC Staff Ex. 32.0 at ¶ 137. Mr. Ehr explained that the Company does not collect data that would allow them to separate EEL provisioning information from stand-alone loop information. *Id.* Because the Company does not have separate EEL provisioning information, the Company was unable to verify that all EELs combinations installed were included in its performance measures. *Id.*

Staff notes that Mr. Ehr also explained that the Company has filed a tariff which revises its performance measurements to separate the measurement of EELs combinations and stand-alone loop combinations. ICC Staff Ex. 32.0 at ¶ 138. As Mr. Ehr subsequently explained, for the measurement of EELs, "[t]he provisioning would start on the application date that's applied to the order..." and that the Company system "...when it accepts an order, it establishes an application date..." *Id.* Staff observes, however, that Mr. Ehr could not provide detail regarding the Company's EELs provisioning practices and their relationship to the Company's proposed EELs performance measurement. *Id.* Specifically, Mr. Ehr was generally unfamiliar with the EELs certification process the Company requires CLECs to use. The Company did, however, clarify that:

The PMs that will report EELs will use the time a valid order is received in the PM reporting processes. The "certification" process happens prior to or in parallel with receipt and processing of the order. In both cases, the

PM implementation and reported results will reflect the date and time the valid LSR is received as the first point for calculation of performance.

Thus, as confirmed by the Company, any delay in the ability of a CLEC to submit a valid order that results from the Company's certification process will not be measured in the Company's PMs. *Id.*

### **(3) Analysis and Recommendation**

Staff points out that because the Company cannot supply EELs provisioning information separately from stand-alone loop provisioning information, there is no way to verify whether the Company has measured provisioning of all EELs it has provided to CLECs or to verify that the Company has provided EELs in a manner that will not impair or impede CLECs ability to use EELs to compete in Illinois. ICC Staff Ex. 32.0 at ¶ 139. The reforms proposed by the Company will, in part, remedy these concerns by separating EELs measurement from stand-alone loop measurement and these changes are consistent with the Commission's directives in the Phase I Interim Order. *Id.*

Mr. Ehr asserts that the proposed tariff changes submitted by the Company are the product of the recently completed six-month collaborative review. Staff responds that the proposed performance measurement system that the Company will use for EELs is deficient. ICC Staff Ex. 32.0 at ¶ 140.

Staff points out that Accessible Letter CLECAM01-0123 entitled "(ORDERING AND PROVISIONING) Revision of Ordering Process for Special Access to Unbundled Network Element Conversions – Illinois, Indiana, Michigan, Ohio, Wisconsin" states: "To initiate the conversion process, a Telecommunications Carrier (TC)/Competitive Local Exchange Carrier (CLEC) must send the Account Manager a correctly completed certification letter that lists each circuit to be converted and the option from the FCC's Supplemental Order Clarification under which each circuit qualifies" See ICC Staff Ex. 32.0 at ¶ 141. Staff understands that this process can take up to 15 business days (or possibly longer) and that the Company will not permit CLECs to submit orders (as that term is used by Mr. Ehr) until this certification process is complete. *Id.* This certification process can represent a significant delay in the EEL provisioning process, presumably a delay that is not experienced by the Company when it provides its own retail services. *Id.* Therefore, in Staff's opinion this delay has a significant probability of impairing CLECs ability to compete using EELs in Illinois. *Id.*

In order to ensure that the Company is effectively measuring its performance in providing EELs in Illinois, Staff recommends that the Company specifically account for its conversion certification process and any similar certification processes applied to new EELs in its performance measurement system. ICC Staff Ex. 32.0 at ¶ 142. Staff further recommended that the Company explain in it's rebuttal affidavits how it will address this problem so that Staff and Intervenors can evaluate the Company's proposed remedy and make an informed recommendation to the Commission. *Id.*

## **b) Staff's Reply Position**

### **(1) Analysis of Company's Response**

Staff notes that Mr. Ehr did not address Staff's concern that the proposed performance measurement system the Company will use for EELs is deficient. ICC Staff Ex. 44.0 at ¶ 31. He indicates only that the Company's proposed EEL performance measurements "...address the requirements of the Phase I Order." *Id.* Staff points out that Mr. Ehr does not dispute the fact that the Company's proposed EELs PMs are deficient. *Id.* Therefore, it is unclear how the proposed EELs PMs comport with the Commission's Interim Order. *Id.*

### **(2) Staff's Recommendation**

Based on Mr. Ehr's response to Staff's concerns, Staff reaffirmed its original recommendation. ICC Staff Ex. 44.0 at ¶ 32. In order to ensure that the Company is effectively measuring its performance in providing EELs in Illinois, the Company must specifically account for its conversion certification process and any similar certification processes applied to new EELs in its performance measurement system. *Id.* Staff further recommended that the Company explain in its surrebuttal affidavits how it will address this problem so that Staff and Intervenor can evaluate the Company's proposed remedy and make an informed recommendation to the Commission. *Id.* If the Company does not address this problem, Staff recommends that the Commission withhold a positive consultation with the FCC regarding the Company's compliance with Section 271(c)(2)(B)(ii) of the 1996 Act. *Id.*

## **c) Commission Analysis and Conclusion**

It appears from the record in Phase II of this proceeding that SBC Illinois cannot supply enhanced extended loop ("EEL") provisioning information separately from stand-alone loop provisioning information. Accordingly, it is impossible to verify whether the company has measured provisioning of all EELs it has provided to CLECs, or to verify that the company has provided EELs in a manner that will not impair or impede CLEC's ability to use EELs to compete in Illinois.

SBC Illinois recently proposed tariff changes that will remedy this problem. It appears to us, however, that these changes are deficient. Because SBC Illinois' proposed EELs measurements do not account for its own EEL certification process, they do not effectively measure the company's performance in providing EELs.

The Staff proposes that, in order to ensure that SBC Illinois is effectively measuring its performance in providing EELs in Illinois, it must specifically account for its conversion certification process and any similar certification processes applied to new EELs in its performance measurement system. The Staff further recommends that SBC Illinois be required to explain in its rebuttal affidavits how it will address this problem so that Staff and Intervenor can evaluate the company's proposed remedy

and make an informed recommendation to the Commission.

The timely and effective provisioning of EELs is an important matter, and likely to become more so in the event that the Federal Communications Commission alters significantly an ILEC's obligation to provide unbundled local switching where EELs are available. As such, we share Staff's concerns and find merit in its recommendations. Accordingly, we direct SBC Illinois to implement a process that specifically accounts for its conversion certification process and any similar certification processes applied to new EELs in its performance measurement system.

#### **4. EEL and UNE-P Rate Clarity**

##### **a) Staff's Initial Position**

##### **(1) Commission Ordered Action**

Staff notes that the Commission's Phase I Interim Order in this instant proceeding directs the Company to demonstrate that:

its UNE "combination rates," i.e., UNE-P and EEL rates, are clearly defined. This might be accomplished by providing examples of typically requested UNE combinations (e.g., common special access to UNE migrations, common new UNE combination requests, common reconfigurations requests, and EELs scenarios that would allow users enough information to determine how Ameritech applies rates to alternative but similar combinations) and explaining how those services and products would be billed under its tariffs and/or interconnection agreements and GIA.

See ICC Staff Ex. 32.0 at ¶ 143.

##### **(2) Company Compliance Filing**

In response, SBC Illinois witness Mr. Silver provided exhibits that demonstrate how the Company's recurring and non-recurring charges are applied to new EELs combinations and to special access to UNE reconfigurations. ICC Staff Ex. 32.0 at ¶ 144. Mr. Silver also provided exhibits that demonstrate how the Company's non-recurring charges apply to new UNE-P configurations and to conversions of existing combinations to UNE-P configurations. *Id.* Mr. Silver's compliance affidavit did not provide any exhibits explaining how recurring charges apply for UNE-P configurations. *Id.*

Staff explained that in response to Staff data requests, Mr. Silver further clarified the manner in which certain of the Company's charges, for example its ULS billing charge, are applied and provided a brief summary of the application of recurring charges for UNE-P combinations. ICC Staff Ex. 32.0 at ¶ 145. Subsequent to these

responses Mr. Silver provided further verbal clarification, for example explaining how the Company assesses carrier connection charges and how charges are applied for EEL reconfigurations. *Id.*

### **(3) Analysis and Recommendation**

Dr. Zolnierек testified that through a combination of Mr. Silver's Phase I Compliance Affidavit, the Company's responses to Staff's data requests, and Mr. Silver's verbal explanations, the Company has clarified the application of its UNE combination rates, in particular its EEL and UNE-P combination rates, consistent with the directive in the Commission's Phase I Interim Order. ICC Staff Ex. 32.0 at ¶ 146. Staff explained that while the evidence and testimony presented by the Company has clarified how the Company applies the charges contained in its UNE tariffs, this same evidence and testimony underscores the fact that the Company UNE tariffs do not make rate application transparent. *Id.* at ¶ 147. For example, Scenario #1 in Mr. Silver's Attachment MDS-2A describes how the Company's tariffs apply to the "EEL 2-Wire Analog Loop – To – DS1 Interoffice Dedicated Transport Collocated" configuration. Among the recurring charges listed in this scenario is a charge for DS1 Interoffice Termination that applied per DS1 interoffice termination per month. The charges listed in MDS-2A are consistent with the fact that there is one DS1 interoffice termination in this scenario. ILL. C. C. No. 20, Part 19, Section 20, 3rd Revised Sheet No. 4 states "Carrier Connection Charge applied for each termination per Interoffice Transport Facility provided." Thus, it would appear from the Company's tariff that a Carrier Connection Charge would be among the non-recurring charges listed for Scenario #1. It is not. Mr. Silver clarified that "...that carrier connection charge only applies in noncollocating situations" a fact that is not transparent from the Company's tariff. *Id.*

Staff noted that CLEC's seeking to purchase these products are, perhaps with the exception of those CLECs participating directly in the instant proceeding, unlikely to have the foresight to consult the Company's responses to Staff's data requests and Mr. Silver's verbal explanations when attempting to figure out how the Company applies its UNE combination rates. *Id.* at ¶ 148. In fact, new entrants may not be able to access these documents at all. *Id.*

Thus, in order to ensure that the application of the Company's UNE combination rates is transparent to CLECs seeking to purchase UNE combinations, Staff recommended that the Company take steps to make the rate application information it presented in the instant proceeding available to CLECs. ICC Staff Ex. 32.0 at ¶ 149. In particular, with respect to EELs, Staff recommended that the Company make available the typical scenarios and associated rate applications contained in Attachments MDS-2A. *Id.* Staff also recommended that the Company provide an additional scenario to MDS-2A that clarifies the application of the Company's non-recurring rates when CLECs add an additional 2-wire loop to a preexisting EEL configuration. *Id.* Staff further recommended that the Company provide this additional EELs attachment (which should include only Illinois charges from MDS-2A) in its rebuttal affidavits. With respect to UNE-Ps, Staff recommended that the Company make available the typical scenarios and associated rate applications contained in Attachment MDS-5. *Id.* Staff notes that

attachment MDS-5 does not, however, include information explaining the application of the Company's UNE-P recurring rates. *Id.* Therefore, Staff recommended that the Company add recurring charge detail to MDS-5 as it has done for EELs in Attachment MDS-2A. *Id.* Staff further recommended that the Company provide this additional UNE-P attachment in its rebuttal affidavits and explain in its rebuttal affidavits the steps it will take to ensure that this information is available to CLECs in Illinois. *Id.*

## **b) Staff's Reply Position**

### **(1) Analysis of Company's Response**

Staff explained that SBC Illinois witness Mr. Silver responded to Staff's recommendations with an outline of steps the Company will or could take to ensure that the rate information presented in this proceeding is available to CLECs in Illinois. ICC Staff Ex. 44.0 at ¶ 34. First, Mr. Silver proposes to insert language into the Company's tariff that clarifies the application of the Company's EEL carrier connection charge. *Id.* Mr. Silver also submits a matrix that explains EELs charges that the Company proposes to insert in the Company's CLEC Online Handbook. *Id.* Finally, Mr. Silver indicates that if the Commission requires additional clarity with respect to UNE-P charge application, the Company proposes to insert a matrix that explains UNE-P charges in the Company's CLEC Online Handbook. *Id.* Dr. Zolnierrek testified that these three steps, if taken by the Company, would resolve this issue. *Id.*

### **(2) Staff's Recommendation**

In light of Mr. Silver's proposals, Staff revised its recommendation with respect to this issue. ICC Staff Ex. 44.0 at ¶ 35. Staff recommended that the Company take the three actions proposed by Mr. Silver to resolve this issue. *Id.* Staff indicates that the Company should insert the proposed tariff language that clarifies the application of the Company's EEL carrier connection charge submitted by Mr. Silver into the Company's tariff. *Id.* The Company should also insert both the EEL and UNE-P rate application matrices into its CLEC Online Handbook. *Id.* If the Company takes these steps during this proceeding, Staff recommends that the Commission consider this issue from the Commission's Interim Order resolved. *Id.*

## **c) Commission Analysis And Conclusion**

In our Phase I Order, we directed SBC to clarify the application of UNE combination rates, and in particular its EEL and UNE-P combination rates. SBC made these clarifications through a combination of its Phase I Compliance Affidavits, company responses to Staff's data requests, and SBC witness Michael Silver's transcribed statements.

The Staff has recommended that, in order to ensure that the application of the SBC Illinois UNE combination rates is transparent to CLECs seeking to purchase UNE

combinations, the company must take steps to make the rate application information it presented in the instant proceeding available to CLECs. We consider the transparency of rates in tariffs to be a matter vital to competition, and one that we have grappled with on an ongoing basis for some years. In light of this, we consider the Staff's recommendations to be reasonable and necessary, and hereby adopt them.

In response to Staff's recommendation, the company has committed to make tariff modifications and include rate application matrices in its CLEC Online Handbook that will make the information presented in the instant proceeding available to CLECs. We consider the Staff's proposal to be reasonable and necessary, and the company's undertaking to make tariff modifications and include rate application matrices in its CLEC Online Handbook to constitute adequate implementation of the Staff's recommendation. Accordingly, we consider this issue satisfactorily resolved.

## **5. EEL and UNE-P Rate Reasonableness**

### **a) Commission Ordered Action**

Staff notes that the Commission's Phase I Interim Order in this instant proceeding directs the Company to demonstrate that:

its UNE combination rates fall reasonably within a range of TELRIC compliance. This might be accomplished by demonstrating, for each UNE combination rate it charges, that the rate is at a level that has been found to be TELRIC compliant by the Commission or, if the rate is interim (either because the Commission ordered an interim rate or because the TELRIC compliance of the rate has never been explicitly addressed by the Commission), proving that the rate is in a zone of reasonableness by, for example, comparing those rates to rates in other comparable states whose have been found to be TELRIC compliant, as indicated above.

See ICC Staff Ex. 32.0 at ¶ 150.

### **b) Company Compliance Filing**

In response, SBC Illinois witness Mr. Silver provided comparisons between the Company's EEL and UNE-P combination rates in Illinois and the respective EEL and UNE-P combination rates in SBC's Texas, California and Michigan service areas. ICC Staff Ex. 32.0 at ¶ 151. Staff noted that Mr. Silver contends that "...SBC Illinois' currently effective NRCs for new UNE-P combinations are within the range of TELRIC compliance." *Id.* at ¶ 152. As support for this finding Mr. Silver indicates "...the SBC Illinois' NRCs for new UNE-P combinations are lower than the comparable charges in Texas, California, or Michigan." *Id.*

With respect to EELs Mr. Silver takes a different approach and compares both the Company's non-recurring and recurring EEL charges to the comparable non-recurring and recurring charges in Texas, California, and Michigan. See ICC Staff Ex.

32.0 at ¶ 153. As noted by Mr. Silver “...the charges for EELs in Illinois are higher than comparable charges in Texas and Michigan.” *Id.* Mr. Silver concludes however, that

The FCC’s Order authorizing 271 relief for SBC California found that SBC California’s rates were ‘just, reasonable, and nondiscriminatory, and satisfy checklist item 2.’ Therefore, since the total amount of SBC Illinois’ EEL charges (recurring plus non-recurring) for EELs are less than the comparable charges in California, the SBC Illinois rates (including NRCs) should be considered reasonable and within the range of TELRIC compliance.

*Id.*

### **c) Staff’s Analysis and Recommendation**

Staff explained that the Company’s compliance filing with respect to this issue was deficient in two key respects. ICC Staff Ex. 32.0 at ¶ 154. First, as noted above, the Company used inconsistent approaches to compare its UNE-P and EEL rates to other states, comparing only non-recurring UNE-P charges, but both non-recurring and recurring EEL charges. *Id.* Second, the Company failed to supply any evidence to account for cost differences across states. The Company supplied information to remedy both of these deficiencies in response to Staff data requests. *Id.* Staff noted that the Company provided a schedule comparing both non-recurring and recurring UNE-P charges across states. *Id.* Then, the Company provided information from the FCC’s USF cost model, which provides estimates of cost differences across states. *Id.*

Dr. Zolnierrek testified that one manner in which to assess rate reasonableness is to compare Illinois rates to rates in other states that have been granted 271 authority by the FCC and to make the comparison’s taking into account cost differences between states. ICC Staff Ex. 32.0 at ¶ 155. Under this type of analysis, the sum of the Company’s recurring and non-recurring UNE-P charges in Illinois is, for the basic UNE-P configuration, well below the comparable sums in Texas and California when cost differences are accounted for. *Id.* For example the USF cost model assessment provided by the Company indicates that Texas costs are 13.8% higher than Illinois costs. However, the UNE-P cost comparison presented by the Company indicates that Texas UNE-P costs exceed Illinois UNE-P costs by over 80%. *Id.* Similarly, the USF cost model assessment provided by the Company indicates that California costs are 1.2% higher than Illinois costs. However, the UNE-P rates in California exceed Illinois UNE-P costs by over 60%. *Id.*

Staff observed that while the USF cost assessment submitted by the Company generally measures recurring cost differences for elements comprising UNE-P, the FCC has no similar USF cost assessment that generally captures all of the elements comprising EELs. ICC Staff Ex. 32.0 at ¶ 156. In particular the non-loop component of the USF cost assessment submitted by the Company reflects switching and shared-transport components rather than the dedicated transport elements that are a part of EELs combinations. *Id.* Nevertheless, the USF cost assessment provides an estimate of cost differences between states and may be used to determine the reasonableness



of EELs rates. For example the USF cost model assessment provided by the Company indicates that Texas costs are 9.2% - 15.2% higher than Illinois costs. However, Staff points out that EEL rates in Illinois are often higher than EEL rates in Texas. *Id.* The USF cost model assessment provided by the Company indicates that California costs are between 0.5% lower than Illinois costs and 6.9% higher than Illinois costs. However, the EEL costs (based on a 24 month assessment) in California exceed Illinois EEL costs by 3.3% - 67.5%. Thus, while relative to Texas and Michigan the Company's EEL rates appear high, relative to California they are, in Staff's opinion, reasonable. *Id.*

Based on the evidence submitted by the Company, Staff concluded that the Company's EELs rates are at the upper end of any zone of reasonableness. ICC Staff Ex. 32.0 at ¶ 157. Staff notes, however, that its recommendation is informed by two additional factors. *Id.* First, Staff agreed to these rates as reasonable interim rates in the reopening in Docket No. 98-0396. Second, the Commission is currently investigating the Company's EEL rates and, therefore, may make the adjustments to these rates that the Texas and Michigan data suggest may be necessary. These factors in combination with favorable comparisons to California lead Staff to conclude that the Company's existing EEL rates are, as interim rates, within a zone of reasonableness. *Id.*

Therefore, based on comparisons to other states with Section 271 approval and factoring in cost differences between states, Staff believes that the Company's current tariffed UNE-P and EEL combinations rates are within a zone of reasonableness. ICC Staff Ex. 32.0 at ¶ 158.

#### **d) Commission Analysis And Conclusion**

In our Phase I Interim Order, we directed SBC Illinois to conduct a so-called "zone of reasonableness" analysis with respect to its UNE combination charges. As Staff notes, one manner in which to assess rate reasonableness is to compare Illinois rates to rates in other states that have been granted 271 authority by the FCC and to make the comparison's taking into account cost differences between states. Comparing the company's combination rates in Illinois to comparable rates in Texas and California in this manner indicates that the company's UNE-P rates are within a zone of reasonableness. We also find, based on Staff's recommendation, that while the company's EELs rates are at the upper end of any zone of reasonableness, they are nonetheless within a zone of reasonableness.

### **6. Other Zone Of Reasonableness Requirements**

#### **a) Staff's Initial Position**

The Phase I Interim Order On Investigation in Docket No. 01-0662 ("Phase I Order") specifically referenced Attachment A to Supplement to Updated Summary of Staff's Proposed Remedial Actions For Ameritech Illinois, filed on November 27, 2002, as containing the list of elements in which a "zone of reasonableness" analysis must be

performed in this phase of the proceeding.<sup>63</sup> The Phase I Order additionally indicates five rates in which a showing need not be made.<sup>64</sup>

With the exception of dark fiber rates and line connection charges for sub-loops, the interim rates addressed by SBCI fall within a zone of reasonableness. The sub-loop line connection charges should be reduced to levels consistent with SBCI's currently tariffed line connection charges for loops prior to our providing a positive recommendation concerning Section 271 approval.

Any review of SBCI's application for long-distance approval necessitates determining whether its UNE rates are TELRIC compliant. In order to deal with the question of interim rates, and rates that have not yet been investigated, the FCC devised a "zone of reasonableness" analysis to allow Section 271 approval prior to the establishment of a complete set of TELRIC based UNEs for a carrier. The FCC did not specify in detail the type of analysis to be performed. Rather, the FCC has accepted a broad range of rate comparisons as sufficient for Section 271 purposes.

Phase I of this proceeding addressed TELRIC compliance issues. Unfortunately, Staff determined that there were many SBCI UNE rates that had not yet been determined TELRIC compliant, as of the time that the evidentiary period in Phase I had concluded. Staff witness Robert F. Koch's testimony in Phase I identified several rates that were either interim in nature, that we had not yet investigated, or that were not compliant with TELRIC principles. As such, a "zone of reasonableness" analysis is needed prior to the Commission giving a positive recommendation regarding SBCI's checklist compliance.

The Phase I order identified Attachment A to Supplement to Updated Summary of Staff's Proposed Remedial Actions For Ameritech Illinois as containing the list of UNEs needing a "zone of reasonableness" analysis in this phase of the proceeding.<sup>65</sup> This attachment contains UNE rates for the following broad categories:

- a. non-recurring charges for UNE-P and EELs;
- b. local switching;
- c. unbundled dark fiber;
- d. unbundled sub-loops;
- e. access to AIN database;
- f. access to CNAM database;
- g. broadband services; and
- h. unbundled loops and HFPL.

---

<sup>63</sup> Phase I Order, ¶ 719.

<sup>64</sup> Id.

<sup>65</sup> Phase I Order, ¶ 719; Attachment A to Supplement to Updated Summary of Staff's Proposed Remedial Actions For Ameritech Illinois was filed by Staff in Phase I of this proceeding on November 27, 2002.

The Phase I Order further indicated that no reasonableness showing needs to be made by SBCI for the following:

- a. interim rates currently set at zero;
- b. access to AIN database rates;
- c. the “record work only” charge;
- d. recurring COPTS port charges; and
- e. Broadband UNE rates.

In addition to an examination of the rates listed in paragraph 9 above, the Order in Phase I requires that all interim tariffs must incorporate true-up provisions. SBCI witnesses filed affidavits on January 22, 2003 addressing compliance issues. W. Karl Wardin addresses pricing issues (b) through (h) of the list in paragraph 9 for SBCI, while Michael D. Silver addresses pricing issue (a) for SBCI.<sup>66</sup>

On February 19, 2002, the Staff and SBCI entered a joint stipulation that states, amongst other things, that SBCI has complied with the directives in ICC Docket 00-0700. As such, Staff has no issues regarding the rates for local switching.

#### **b) Staff’s Reply Position**

SBCI has addressed the concerns and recommendations presented raised by the Staff in this proceeding. Based on the Staff’s review of SBCI witness W. Karl Wardin’s rebuttal affidavit, it appears that SBCI has satisfied the Staff’s concerns regarding the CNAM database query rate and true-up language for interim tariffs. However, certain SBCI dark fiber mileage and sub-loop line connection rates remain, in the Staff’s opinion, unreasonable. The Staff therefore proposes alternative rates for these services that, if adopted by SBCI, would bring the company into full compliance with Checklist Item II rate requirements.

### **7. Unbundled Local Switching Rates**

At the time that the evidentiary portion of Phase I was completed, we had not yet entered our order in Docket No. 00-0700. As noted above, Docket No. 00-0700 has been completed and compliance tariffs have been filed in the mean time. Staff no longer has any concerns regarding ULS, and this fact is reflected in the stipulation referred to above.

---

<sup>66</sup> Mr. Wardin addresses pricing issues in a manner that is consistent with the proposed Phase I order, as his affidavit was submitted prior to the issuance of the final Phase I order. My affidavit does not tie directly to the pricing issues addressed in Mr. Wardin’s affidavit, due to several modifications to the Phase I Order affecting pricing issues.

## **8. Dark Fiber Rates**

### **a) Staff's Initial Position**

SBCI Witness W. Karl Wardin presented a “zone of reasonableness” analysis of dark fiber rates with those in place in Texas, California and Michigan. Mr. Wardin asserts that the Texas rates are difficult to compare with Illinois rates, the California rates are significantly higher than those in Illinois, and that the Michigan rates are slightly lower than those in Illinois. Based on this analysis, Mr. Wardin concludes that Illinois rates are reasonable.

The Staff concurs with Mr. Wardin’s assessment of the Texas and California rates. However, it does not concur with his conclusions regarding the Michigan rates. Specifically, Mr. Wardin does not explain the basis for his belief that Illinois rates are only “slightly higher” than Michigan rates. If the Michigan rates are to be used as evidence for the conclusion that the Illinois rates are reasonable, than an explanation of what “slightly higher” means in this context is necessary. According to Mr. Wardin’s own analysis, in Attachment WKW-1 to his affidavit, all rates listed for dark fiber are higher in Illinois than in Michigan.

The Staff’s comparison of dark fiber rates between Illinois and Michigan is contained in Staff Ex. 38.0, Schedule 38.02, and does not support the conclusion that Illinois rates are only “slightly higher” than those in Michigan. Rather, Schedule 38.02 shows that all recurring and non-recurring rates for dark fiber are higher in Illinois. In the least offensive case, administration charges are 7.47% higher in Illinois; in the most ridiculous case, dark fiber mileage rates are 1,385% higher in Illinois. As such, the Illinois rates are not “slightly higher”, but rather “significantly higher”. And in the case of mileage rates, the Illinois rates are better described as “astronomically higher”.

Further, Mr. Wardin’s analysis lacks any mention of costs. Rate differences between states should correspond with cost differences between states. The “zone of reasonableness” analyses used in other states’ Cost analysis in common in Section 271 proceedings before the FCC, where interim rate analysis has required a corresponding cost analysis.<sup>67</sup> The FCC has concluded that interim rate differences between states can be rationalized by using its proxy cost model to show that costs differ in a similar manner. There is no reason to believe that Illinois proxy costs are higher than those for Michigan, and in fact there is reason to suppose they might be lower. Before we accept Mr. Wardin’s conclusions regarding dark fiber, the Staff urges us to require SBCI to provide a proxy cost analysis that comports with Mr. Wardin’s conclusions.

### **b) Staff's Reply Position**

Mr. Wardin responded to the Staff’s concerns regarding Dark Fiber rates in his rebuttal affidavit. Additional proxy cost information was provided as the Staff requested.

---

<sup>67</sup> See, e.g., the SBC Missouri-Oklahoma Section 271 proceeding. The FCC determined that interim rates in these states were reasonable only after a comparison with rates in Texas were justified via the FCC Proxy Cost Model.

As a result, the Staff is satisfied regarding Dark Fiber nonrecurring charges, as well as Dark Fiber Termination and Dark Fiber Cross Connect Charge. However, Mr. Wardin was unable to provide any evidence demonstrating that the Illinois Dark Fiber Mileage rates are reasonable in comparison with Michigan.

The Staff responds to the Phase I Compliance Rebuttal Affidavit of SBCI witness W. Karl Wardin, filed on March 17, 2003, as follows: Mr. Wardin argues that Michigan rates for dark fiber mileage are not proper, and therefore are not appropriate for comparison with Illinois rates. Mr. Wardin then further argues that California and Texas rates provide a more appropriate comparison. Mr. Wardin then provides rates for non-SBC states that have higher rates for dark fiber mileage as additional proof of reasonableness.

Staff urges us to reject these arguments for several reasons. First, Mr. Wardin provided these very same Michigan rates as evidence of reasonableness in his Phase 1a Compliance Affidavit, filed January 22, 2003. See Phase 1a Compliance Affidavit of SBCI witness W. Karl Wardin at paragraph 14, Attachment 1, and Attachment 2A. Nowhere in his rebuttal affidavit does Mr. Wardin comment on why there is an inconsistency in his arguments between the January 22 and March 17 affidavits. This is a clear contradiction. Second, the company's basis for concluding the Michigan rates are improper is based, as nearly as the Staff can determine, on nothing more than the fact that SBC is unsatisfied with the Michigan PUC's ruling concerning these rates. Third, Mr. Wardin did not address the fact that the rate structure in Illinois more closely matches that of Michigan than any other state for which rates are of record in this proceeding.

As such, the Staff recommends that the Illinois rates be reduced to the levels of the Michigan rates on an interim basis for the satisfaction of Checklist Item II.

## **9. Commission Analysis And Conclusion**

In our Phase I Interim Order, we directed SBC Illinois to conduct a so-called "zone of reasonableness" analysis with respect to a number of its interim rates, including its rates for the dark fiber UNE.

SBC Illinois has submitted such an analysis, contending chiefly that its Michigan rates exceed for dark fiber exceed its Illinois rates, and therefore fall within the zone of reasonableness. However, the Staff contends that SBC Illinois' "zone of reasonableness" analysis for dark fiber rates is not conclusive and should not be relied upon for checklist item (ii) compliance.

We agree with the Staff that the comparison of Michigan rates to Illinois rates is inconclusive. As SBC Illinois constantly reminds us – on the altogether too frequent occasions when Illinois rates exceed those obtaining in other neighboring states – cost and rate structures are different in each state, and comparisons of one state to another, without more, yield little. We note that SBC Illinois chose not to submit information regarding rates currently obtaining in other states, which might serve to put the Michigan and Illinois rates into better context.

To remedy this defect, the Staff has proposed the following:

(a) SBC Illinois should address why it believes that having rates in Michigan that are higher than in Illinois is evidence of reasonableness.

(b) SBC Illinois should respond to Staff's concern regarding cost differences between Michigan and Illinois, and how this relates to the price differences that exist.

(c) In the absence of an adequate showing of reasonableness for these rates, SBC Illinois must propose rate reductions that are consistent with cost differences between Michigan and Illinois.

(d) Failure to address Staff's concerns adequately should be considered noncompliance with checklist item (ii).

We find the Staff's recommendations to be meritorious, and we hereby adopt them.

## **10. Sub-Loop Rates**

### **a) Staff's Initial Position**

Mr. Wardin has proposed to reduce rates for sub-loops significantly for the purpose of satisfying Section 271 interim pricing requirements while the permanent rates are in the process of being investigated.<sup>68</sup> Mr. Wardin then performs a "zone of reasonableness" analysis of these rates in his affidavit and concludes that all necessary rate adjustments have been made. The Staff concurs in Mr. Wardin's approach to this analysis. Recurring sub-loop rates are unique in that they must be considered on the basis of their relationship to loop rates. The Staff argued in Phase I of this proceeding that Illinois sub-loop rates were not reasonable, as they were in many cases higher than loop rates. Mr. Wardin's proposal goes to great lengths to address the disparities that Staff found to exist in Phase I, and insures that the Illinois sub-loop rates, as a percentage of loop rates, are reasonable when compared to California and Michigan. As such, Staff does not find it necessary to perform a concurrent cost analysis for these rates.

Line connection charges for sub-loops, however, were not adjusted as part of Mr. Wardin's proposal. Staff Ex. 38.0, Schedule 38.03 shows that these rates are between 906% and 1080% higher in Illinois than in Michigan. Additionally, line connection charges for sub-loops are between 1079% and 1282% higher than line connection charges for loops within Illinois. In keeping with the vernacular used to describe dark fiber rates, these line connection rates are "astronomically higher" in Illinois. Mr. Wardin does not address either of these concerns in his "zone of reasonableness" analysis. As such, the Staff cannot recommend that these interim non-recurring rates be deemed reasonable. The Staff recommends that SBCI reduce the line connection charges for sub-loops to be equivalent to the line connection charge for loops in Illinois, \$20.21.

---

<sup>68</sup> Wardin Affidavit, ¶ 11.

## **b) Staff's Reply Position**

Mr. Wardin argues that line connection charges for Sub-Loops are reasonable in comparison with California, and that Michigan rates are not comparable to Illinois rates. As such, Mr. Wardin concludes that the concerns the Staff raised regarding the Illinois-Michigan rate comparison are not important. Although the Staff concurs with Mr. Wardin that the Illinois rates are reasonable in comparison with California, it cannot concur in the company's position concerning Michigan rates.

The Staff specifically takes issue with Mr. Wardin's assertion that Michigan rates do not form a proper basis for comparison. First, the Michigan PUC ordered the Michigan rates. As such, there is some assurance that they are TELRIC compliant. Second, Mr. Wardin presented the Michigan rates as evidence of reasonableness in his affidavit. Third, the cost structure for UNEs in Michigan more closely resembles that in Illinois, and as such, the Michigan rates form a better basis for comparison than do the California rates as a general rule. For these three reasons, the Staff rejects Mr. Wardin's claim that Michigan rates are not relevant for comparison. While SBCI may be unsatisfied with the outcome in the Michigan docket that set these rates, this is certainly not a reasonable basis to dismiss the comparison.

The significant deviation between the Illinois and Michigan rates cannot be ignored. As Mr. Wardin indicates, part of the reason for this divergence is that certain costs included in the Illinois rates are not a component of the Michigan rates. As a thorough analysis of cost development appears to be outside the scope of the current proceeding, the Staff considers it improper to address this assertion or give it any credence, other than to note that it is self-serving. The evidence shows that the two rates are not reasonably similar.

The Staff notes that Mr. Wardin, in his surrebuttal affidavit, again contends that Michigan rates for line connection charges for sub-loops are somehow not properly comparable to Illinois, but that rates for Texas and California are comparable. Again, the Staff points out the fact that rate structures in Illinois appear to it to be more nearly comparable to Michigan rate structures than to those in effect in Texas or California. Accordingly, the Staff urges us to reject SBCI's argument in this regard.

The Staff's most significant concern in this regard is that these line connection charges are set at a level that would not allow a reasonable competitor to take advantage of sub-loop offerings. Excessive rates for nonrecurring charges represent a barrier to entry into this form of facilities based competition. Combined with the potential dissolution of UNE-P as the result of the FCC Triennial Review, the Staff is of the opinion that any rate that restricts the ability of CLECs to enter into facilities based competition is of serious concern. Interim line connection rates that are over 1,000% higher than in comparable states indicate that there are significant concerns regarding their reasonableness that must be addressed in this proceeding. The Staff continues to recommend that we direct SBCI to reduce the interim sub-loop line connection rates to \$20.21.

### **c) Commission Analysis And Conclusion**

In our Phase I Interim Order, we directed SBC Illinois to conduct a so-called “zone of reasonableness” analysis with respect to a number of its interim rates, including its rates for the line connection charges for sub-loops.

Staff contends that SBC Illinois has not responded to its concerns regarding line connection charges for sub-loops, nor has the company provided a “zone of reasonableness” analysis for these rates.

We concur with the Staff that SBC Illinois has failed to supply a satisfactory zone of reasonableness analysis.

To resolve this problem, Staff recommends that:

(1) SBC Illinois provide a “zone of reasonableness” analysis for its sub-loop line connection charges;

(2) If SBC cannot show that its line connection charges for sub-loops are reasonable, Staff recommends that these charges be reduced to the point where they are on par with line connection charges for loops in Illinois as well sub-loop line connection charges in Michigan;

(3) Failure to address Staff’s concerns adequately should be considered noncompliance with checklist item (ii).

We find the Staff’s recommendations to be meritorious, and we hereby adopt them.

### **11. Broadband Services Rates**

The Staff notes that we have indicated that this item is *prima facie* reasonable.<sup>69</sup> As such, the Staff does not address any ongoing concerns that it has with broadband service rates or the analysis performed by Mr. Wardin for these rates.

### **12. OSS Modification Charge – Checklist Item IV**

The only rate listed in Attachment A within this category is the OSS modification charge. The Staff notes that we ruled in our Phase I Order that all zero-rated services are *prima facie* reasonable. Since the OSS modification charge currently is zero, Staff concludes that SBCI’s OSS modification charge is therefore reasonable. As such, Staff has no further pricing concerns regarding Checklist Item iv.

### **13. AIN Database Query Rates – Checklist Item VII**

Staff’s concern with the rate for AIN database query lies in the fact that it is

---

<sup>69</sup> Id at 719.



performed via a bona-fide request (“BFR”), and as such it cannot be determined whether it is TELRIC compliant. However, Mr. Wardin has shown that AIN database query rates are done on a BFR basis in California, Michigan, and Texas. As such, it is the Staff’s opinion that the BFR pricing for this element is sufficient for Section 271 purposes. The Staff therefore withdraws any concerns previously raised regarding pricing issues for Checklist Item vii. The Staff notes that this withdrawal of concern is for interim pricing issues in this proceeding only and is in no way a withdrawal of concerns regarding permanent pricing of the AIN database query, which may be investigated in an upcoming proceeding.

#### **14. CNAM Database Query – Checklist Item X**

##### **a) Staff’s Initial Position**

Mr. Wardin has indicated that SBC will lower its interim CNAM query charge to that it uses in Michigan, subject to true-up, for the purpose of satisfying any “zone of reasonableness” concerns. Although the Staff commends this act of good faith, the analysis provided by Mr. Wardin does not include a comparison of proxy costs. Such an analysis may show that Illinois costs are significantly lower than those in Michigan. In such a scenario, it is the Staff’s opinion that the SBC must further reduce the Illinois rate in order for it to be considered reasonable. The Staff recommends that SBCI incorporate proxy costs as part of its “zone of reasonableness” analysis for this rate in its rebuttal round. The Staff further recommends that, in the case that the revised analysis does not support SBCI’s current proposal, the rate proposal be adjusted accordingly.

##### **b) Staff’s Reply Position**

SBCI has satisfied the Staff’s concerns regarding the CNAM database query rate.

##### **c) Commission Analysis And Conclusion**

In our Phase I Interim Order, we directed SBC Illinois to conduct a so-called “zone of reasonableness” analysis with respect to its CNAM Database Query charge. SBC Illinois has agreed to lower its interim CNAM Database Query charge to that of Michigan, and provided additional information satisfying Staff’s concerns regarding the CNAM database query rate.

We concur and find that SBC Illinois has satisfied our directive to establish that its CNAM Database Query Charge is within a so-called “zone of reasonableness.”

## **15. True-up Language**

### **a) Staff's Initial Position**

Paragraph 720 of the Phase I Order requires SBCI to "...amend its tariffs or agreements, if necessary, so as to include language providing for true-up reconciliation effective as of the date of this Order." Mr. Wardin has indicated true-up language will be implemented to satisfy the Phase I Order.<sup>70</sup> The Staff has reviewed this proposal and is satisfied with it. It must be noted, however, that as of the filing of this affidavit, SBCI has not yet filed these language changes.

### **b) Staff's Reply Position**

SBCI has satisfied the Staff's concerns regarding true-up language for interim tariffs.

## **16. Staff's Conclusion Regarding Rates**

SBCI is much closer to compliance with Section 271 requirements now as compared to during Phase I of this proceeding. The company has shown a willingness to address the concerns of Staff and other parties and should be commended for these actions. However, as noted above, a number of interim pricing issues remain. In summary, the Staff recommends the following to address these issues:

- a. That SBCI's dark fiber non-recurring rates and its CNAM query be found to fall within a "zone of reasonableness," but that its dark fiber mileage rates be found not to do so;
- b. That SBCI's dark fiber mileage rates be lowered to mirror SBC's dark fiber mileage rates in Michigan in order to be considered reasonable interim rates for Section 271 compliance purposes;
- c. That line connection charges for sub-loops be lowered to \$20.21 immediately in order to be considered reasonable interim rates for Section 271 compliance purposes;
- d. Failure to implement all of the above stated recommendations shall be considered failure to achieve Section 271 compliance on pricing issues.

---

<sup>70</sup> Wardin Affidavit, ¶ 33.

## **B. Access to Operations Support Systems**

### **1. Independent Third Party Review of SBC Illinois' Operational Support Systems**

#### **a) Background**

BearingPoint is conducting the independent third party review of SBC Illinois' operational support systems pursuant to Condition 29 of our SBC/Ameritech Merger Order in Docket No. 98-0555 ("Merger Order"). Likewise, the scope of the third party review was set based upon the parameters outlined in Condition 29 of our *Merger Order*. We required SBC Illinois to work in collaboration with CLECs and Commission Staff in determining the set of changes SBC Illinois would make to its OSS. We designed the independent third party review to specifically determine whether or not SBC Illinois is meeting the specific OSS requirements of the Merger Order and as further defined by the parties given that a record is being created for consultation with the FCC.

The FCC considers OSS testing to provide an objective means by which to evaluate a Bell Operating company's ("BOC") OSS readiness, and may otherwise strengthen an application where competitors challenge the BOC's evidence. Likewise, the FCC notes that the persuasiveness of a third-party review is dependent upon the qualifications, experience and independence of the third party and the conditions and scope of the review itself<sup>71</sup>. If third party testing has not been conducted for a given OSS function, then commercial usage is used as evidence to prove whether or not the OSS functions are operationally ready<sup>72</sup>. Therefore, the results from BearingPoint's independent third party review are also being presented in this proceeding for consideration.

The Master Test Plan issued by BearingPoint on March 30, 2001 (and as later amended on May 2, 2002) describes the approach it used for testing SBC Illinois' OSS systems, interfaces and business processes. Ordering, provisioning, billing, maintenance and repair, account management and change management are the key business functions that are included in BearingPoint's review. The test was designed to be representative of the types of real-world business situations that are present in Illinois. The Staff, however, contend that the test could not be completely exhaustive in scope and, therefore, not all possible permutations and combinations of features and functions of products were evaluated. The operational portion of BearingPoint's review was performed through two different types of tests; process and procedure reviews (PPR) and transaction validation and verification (TVV) tests. The PPR and TVV tests were further separated into the four functional areas, Pre-Order and Order, Provisioning, Maintenance and Repair, and Billing. A fifth test aspect named

---

<sup>71</sup> *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket # 97-137, FCC 97-298 ¶1216 (rel. Aug. 19, 1997) ("Ameritech Michigan Order").

<sup>72</sup> *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket 99-925, FCC 99-404, ¶189 (rel. Dec. 22, 1999) ("Bell Atlantic New York Order:").

Relationship Management and Infrastructure, was also included as part of the PPR tests. To administer its TVV tests, BearingPoint established a test CLEC ("Test CLEC"). BearingPoint set up the operational infrastructure of a CLEC so that it could submit and receive actual transactions to/from SBC Illinois in the same manner as any CLEC, the Test CLEC. This was done so that BearingPoint could simulate the CLEC experience of conducting business with SBC Illinois while maintaining a controlled environment in which to administer its test.

As the Staff reminds us, BearingPoint's operational evaluation began in May 2001, and focuses upon 510 separate evaluation criteria. Each evaluation criterion was analyzed and reported on individually, and assigned one of four results: Satisfied, Not Satisfied, Indeterminate, or Not Applicable. The results are assigned to each evaluation criteria based upon BearingPoint's examination of the norms, benchmarks, standards and guidelines assigned to each evaluation criteria. The results are defined as follows:

*Satisfied:* The norm, benchmark, standard, and/or guideline was met or exceeded;

*Not Satisfied:* The norm, benchmark, standard, and/or guideline was not met;

*Indeterminate:* Insufficient evidence has been collected to determine a result;

*Not Applicable:* The evaluation criterion could not be evaluated.

On December 20, 2003, as we ordered, BearingPoint issued a Draft OSS Evaluation Project: Operational Report ("Operational Report") that reported its findings as of the date the report was produced<sup>73</sup>.

BearingPoint's high level test results, as presented in the Executive Summary of its Operational Report, by test domain to be as follows (Operational Report at 10):

**Table 1 – BearingPoint Operational Test Results**

<b>Test Family</b>	<b>Number of Evaluation Criteria</b>				
	<b>Satisfied</b>	<b>Not Satisfied</b>	<b>Indeterminate</b>	<b>Not Applicable</b>	<b>Total</b>
Pre-Ordering/Ordering	87	14	0	0	101
Provisioning	76	1	5	0	82
Billing	94	1	0	5	100

<sup>73</sup> As admitted by mutual agreement of the parties during the February 5, 2003 hearing.

Maintenance and Repair	79	2	0	0	78
Relationship Management	131	0	2	7	140
<b>TOTAL</b>	<b>464</b>	<b>18</b>	<b>7</b>	<b>12</b>	<b>501</b>

The operational test was conducted using a “test until pass” approach. Under this approach, if BearingPoint encountered an issue or problem during the test of SBC Illinois’ OSS, BearingPoint informed SBC Illinois by documenting the issue publicly in either an Observation Report or an Exception Report. If SBC Illinois made a change to a process, system or document in response to an Exception Report or Observation Report, BearingPoint would conduct a retest as appropriate. Accordingly, Ms. Weber notes that many of the evaluation criteria that currently have a Not Satisfied result have been tested more than once, and the company has been unable to satisfy the evaluation criteria.

#### **b) Staff’s Initial Position**

The Staff directs our attention to Section 271 competitive checklist item (ii), which requires that carriers provide nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1) of the Act<sup>74</sup>. The FCC has further interpreted this to include access to OSS and other UNEs, UNE combinations and the pricing of UNEs<sup>75</sup>.

The typical OSS functions evaluated by states and the FCC in a Section 271 review include pre-ordering, ordering, provisioning, maintenance and repair, billing and change management. The FCC has stated that access to OSS functions fall squarely within an incumbent LEC’s duty under Section 251(c)(3). Section 251(c)(3) requires an incumbent LEC to provide unbundled network elements under terms and conditions that are nondiscriminatory, just and reasonable.<sup>76</sup>

In her Phase I Initial Affidavit, Ms Weber evaluates OSS deficiencies raised by BearingPoint in its Operational Report as they relate to checklist item (ii). As an initial matter, Ms. Weber notes that, merely because BearingPoint’s test did not reveal a deficiency, it does not mean that SBC’s OSS is free of problems, deficiencies, or other impediments to proper functioning. BearingPoint’s review of each evaluation criteria was conducted during defined time periods, and the scope of BearingPoint’s evaluation

<sup>74</sup> 47 U.S.C. § 271(c)(2)(B)(ii).

<sup>75</sup> *Joint Application by SBC Communications Inc. et al. to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri*, CC Docket 01-194, FCC 01-338, at 8-40 (rel. Nov. 16, 2001) (“ARK/MO 271 Order”).

<sup>76</sup> Bell Atlantic New York Order, 15 FCC Rcd at 3990, para. 84.

did not cover all aspects of SBC Illinois' OSS or all business processes that support its OSS.<sup>77</sup>

Turning to more specific matters, Ms. Weber points out that there are several aspects of SBC Illinois' OSS that received Not Satisfied evaluations in BearingPoint's Operational Report, and that, accordingly, we should require SBC Illinois to address prior to the Commission providing a positive Section 271 recommendation to the FCC. At a minimum, avers Ms. Weber, SBC Illinois should address the deficiencies noted in the evaluation criteria discussed below, and when SBC Illinois believes it has addressed these deficiencies, it should be required to have an independent third party evaluate SBC's compliance to certify that the evaluation criteria previously found to be Not Satisfied are in fact Satisfied<sup>78</sup>. Specifically, opines Ms. Weber, SBC Illinois should be required to address evaluation criteria TVV1-4, TVV1-26, TVV1-28, TVV4-27, TVV7-14, and PPR13-4 within the context of this proceeding, as we have already directed the company to address when we approved Staff's January 6, 2003 (Updated on January 13, 2003) Staff Report during the January 14, 2003 Commission bench session. Staff Ex. 31.0, Schedule 31.03.

#### Ordering: Timeliness of Service Order Completion Responses (TVV1-28)

As the Staff observes, service order completion responses ("SOCs") are the notifications SBC Illinois sends to CLECs to indicate that the work the CLEC requested (new account to be provisioned, feature to be added to an account, disconnect of an account, etc.) has been completed. Timely service order completion responses are important to CLECs, because the CLEC needs this information so that it can communicate completion of work to its end user customer. If SBC Illinois does not provide timely SOC's, CLECs have to expend additional time and resources to investigate whether or not the products and services they have ordered were provisioned on the committed due date.

The Staff notes that, in its evaluation of ordering criteria TVV1-28, BearingPoint found that SBC Illinois did not provide timely completion notices for the evaluation period. For the test, BearingPoint used a benchmark of 99 percent of completion notices received within 1 business day of the completion date of the service order. This benchmark is analogous to the standard we approved for performance measure 7.1, Percent Mechanized Completion notices returned within one day of work completion. BearingPoint first publicly reported this issue to the company in Exception Report 18 on November 29, 2001. Subsequent to the initial public notice, SBC Illinois twice indicated that the problem had been addressed and asked BearingPoint to conduct a retest of the

---

<sup>77</sup> For example as BearingPoint responded during the February 5, 2003 hearing it did not perform any volume or functional testing on the LSOG5 version of the Company's EDI or CORBA application to application interfaces nor did it perform any actual tests of the Company's bill reconciliation process (BearingPoint response to Staff hearing questions BE/Staff 7, 8).

<sup>78</sup> In its January 14, 2003 directive, the Commission stated that BearingPoint should conduct the verification activities once SBC Illinois addressed the deficiencies noted in the Operational Report. Staff Ex. 32.0, Schedule 32.03.

evaluation criteria. The company failed both retests, which were conducted in the April 2002 and the October 2002 time periods<sup>79</sup>.

During the latest performance measure six-month review collaborative, the parties mutually agreed to alter the standard and definition for performance measure 7.1. The parties agreed to change the benchmark standard to 97% from 99%, and further agreed that Sundays and holidays should be considered non-processing days from a business rule perspective. While there has been agreement of these business rule changes within the collaborative, the Commission has not officially approved them, and therefore, they are not in effect. Regardless of this fact, the company still fails to provide timely service order completion notices when the modified standards or rules for PM 7.1 are applied to BearingPoint's evaluation. For example, when Sundays and holidays are considered to be non-processing days, 1032 out of 1114 (92.6 percent) mechanized CSRs were received by the Test CLEC from SBC Illinois' systems within 1-day time frame, which is well below the modified benchmark of 97%. Staff Ex. 31.0, Schedule 31.02<sup>80</sup>.

The Staff points to SBC witness Cottrell's statement that SBC Illinois' commercial performance demonstrates that its service order completion notifications are supplied in a timely manner, but that, per our direction of January 14, 2003, SBC Illinois will work further to resolve the issue. Cottrell Affidavit, ¶21. During the hearings in this proceeding, SBC Illinois indicated that all corrective actions related to this issue would be implemented no later than May 31, 2003<sup>81</sup>. Ms. Weber does not concur in Mr. Cottrell's statement that SBC Illinois' commercial performance demonstrates that its service order completion notifications are supplied in a timely manner. In Ms. Weber's opinion, the three months of performance measurement data submitted by SBC Illinois in this proceeding actually shows that SBC Illinois' commercial performance for performance measure 7.1 failed to meet the defined benchmark for any of the three months for 3 of the 4 sub-measures reported. Ehr Affidavit, Attachment A.

The Staff contends that timely SOC notices are vital to a CLECs' ability to provide good service to their customers. Delay in providing SOC notices may cause CLECs to expend additional time and resources to follow up on the status of orders that should not be necessary, if SBC's OSS is functioning adequately. Ms. Weber therefore recommends that we should continue to require that SBC Illinois address issues related to the delivery of timely service order completion notices, as we required on January 14, 2003. Further, Ms. Weber recommends that we direct SBC Illinois to obtain independent third-party verification that the issues have been addressed after SBC Illinois completes its planned changes. Ms. Weber notes that SBC Illinois anticipates such planned changes will be completed no later than May 31, 2003<sup>82</sup>.

#### Provisioning: Accuracy of Updates to Customer Service Record (TVV4-27)

---

<sup>79</sup> Operational Report at 574-575.

<sup>80</sup> Staff Ex. 31.0, Schedule 31.02. Exception 18v3 Additional Information issued by BearingPoint on January 29, 2003.

<sup>81</sup> February 13, 2003 hearing, Cottrell response on follow-up.

<sup>82</sup> Staff Ex. 32.0, Schedule 32.01. February 13, 2003 hearing, Cottrell response on follow-up.

As the Staff points out, customer service records provide a CLEC with the ability to verify which specific services have been provisioned on customer accounts/lines, and further enable CLECs to place service/repair orders using “normal” procedures. Without accurate CSR updates, CLECs expend additional resources and time to investigate whether the products and services ordered were actually provisioned to their end user customers accounts, or to check the status of a customer’s account, prior to issuing a trouble ticket for maintenance and repair work.

In the TVV4-27 provisioning test, BearingPoint evaluated the accuracy of CSRs, and determined that SBC Illinois’ post-order CSRs did not accurately reflect what was ordered to be provisioning on the pre-order CSRs.<sup>83</sup> For its test, BearingPoint used a benchmark of 95% accuracy when comparing pre-activity CSRs and local service requests (LSRs) to post-activity CSRs. Additionally, BearingPoint sought to ensure that the CSR reflected all of the correct feature/service information within five business days of SBC providing the service order completion (SOC) notice to the CLEC. BearingPoint produced Exception Report 128 on June 20, 2002, which confirms that SBC Illinois failed to update Test CLEC CSRs accurately. BearingPoint reported a CSR update accuracy rate of only 86%. On August 6, 2002 SBC Illinois indicated the issues with CSR accuracy were resolved and that BearingPoint could conduct a retest. BearingPoint conducted a retest of this evaluation criterion from August through October 2002 and determined that 92.8% of CSRs were updated accurately, which is still below the 95% accuracy benchmark established.

Staff notes that, in paragraph 58 of his Phase II affidavit, SBC witness Mr. Cottrell states that the differences noted by BearingPoint are not material in their degree of impact on commercial orders, but that SBC Illinois recognizes the benefits in improving accuracy for all customer records and, consistent with the Commission’s decision on January 14, 2003, it will work further to resolve these issues. During the hearings in this proceeding SBC Illinois indicated that all corrective actions related to the accuracy of CSRs would be implemented no later than June 30, 2003<sup>84</sup>.

Ms. Weber gives it as her opinion that CSR accuracy is very important and, without accurate CSRs, SBC Illinois treats CLECs in a discriminatory manner, because the CLEC does not own the facilities to be able to determine what features/services are on a line or account like SBC Illinois can for its own end users. In addition, notes Ms. Weber, if CSRs are not updated accurately, CLEC requests to reported trouble on an account investigated by SBC Illinois may be rejected unnecessarily. Therefore, consistent with our directive on January 14, 2003, Ms. Weber recommends that we direct SBC Illinois to address, in the course of this Section 271 proceeding, deficiencies in this area. Ms. Weber further recommends that SBC Illinois be required to obtain verification from an independent third party that the issues have been addressed after SBC Illinois completes its work to address these issues.

#### Maintenance & Repair: Accuracy of Close Out Coding on End-to-end Trouble Faults (TVV7-14)

---

<sup>83</sup> BearingPoint Operational Report at 708.

<sup>84</sup> Staff Ex. 32.0, Schedule 32.01. February 13, 2003 hearing, Cottrell response on follow-up.



A CLEC enters a trouble ticket with SBC Illinois when one of its end users is experiencing problems with its services or facilities. When an SBC Illinois technician completes the repair work, the technician assigns a close out code to the trouble ticket, indicating the action required to correct or fix the problem. As SBC witness Cottrell states in his Phase II Affidavit, Cottrell Affidavit, ¶69, trouble ticket closeout codes are used for billing and reporting purposes, and if close out codes are not assigned correctly, SBC may bill CLECs incorrectly for work done<sup>85</sup>. In addition, from a performance measure reporting standpoint, incidents of trouble caused by CLECs or CLEC facilities are excluded from SBC Illinois' performance measurement results. Therefore, if trouble tickets are incorrectly attributed to CLECs, then those troubles tickets will not be reflected in the applicable performance measurement reports.

In the TVV7-14 end-to-end trouble report processing test, BearingPoint evaluated the accuracy of closeout codes applied to special circuit end-to-end trouble reports. BearingPoint found that special circuit end-to-end trouble reports did not contain closeout codes that accurately defined the trouble condition that was repaired by the technician. For this test, BearingPoint used a benchmark of 95% of end-to-end trouble reports containing closeout codes that accurately defined the cause of trouble. BearingPoint issued Exception 131 on June 27, 2002, indicating that only 91.7% of the special circuit troubles were reported accurately by SBC Illinois during the course of BearingPoint's test. On July 22, 2002 SBC Illinois requested that a retest be conducted and BearingPoint determined that SBC's performance had in fact declined; only 87.5% of the close out codes were accurately reported during the course of the retest.<sup>86</sup>

In paragraph 71 of his Phase II affidavit, Mr. Cottrell states that SBC Illinois has implemented initiatives to further improve the coding of trouble reports and believes significant improvements have been made. He further states that SBC Illinois recognizes the Commission's interest in the accuracy of maintenance and repair close out codes, and consistent with the Commission's January 14, 2003 directive, SBC Illinois will work to further resolve the issue. During the hearings in this proceeding, SBC Illinois indicated that all corrective actions related to this issue would be implemented and it would be prepared for a retest to begin no later than July 2003<sup>87</sup>.

Ms. Weber opines that the accuracy of close out codes is an important issue. If SBC Illinois does not apply the correct close out code when completing a trouble ticket, CLECs may be charged an improper amount for the work done. Therefore, consistent with our direction on January 14, 2003, Ms. Weber recommends that we direct SBC Illinois in the course of this proceeding to address its deficiencies with respect to the accuracy of special circuit close out codes, and have SBC Illinois obtain independent third-party verification that the issues have been addressed after it completes its work to address the issues.

---

<sup>85</sup> Repair charges are based on both service call charges and time and material (T&M) charges. If dispatch of a technician is required the service call charge is \$71 in addition to the T&M charges, which in Illinois are \$25 per ¼ hour. February 13, 2003 hearing, Cottrell response on follow-up to Staff question 6.

<sup>86</sup> BearingPoint Operational Report at 763.

<sup>87</sup> Staff Ex. 32.0, Schedule 32.01. February 13, 2003 hearing, Cottrell response on follow-up.

#### Other OSS Deficiencies (TTV1-4, TVV1-26, PPR13-4)

TVV1-4, TVV1-26 and PPR13-4 are the other three operational evaluation criteria for which SBC Illinois received a Not Satisfied result in the Operational Report. These evaluation criteria are as follows:

Ordering: SBC Ameritech provides required order functionality (TVV1-4);

Ordering: SBC Illinois provides timely mechanized firm order confirmations (FOC) in response to electronically submitted orders (TVV1-26);

Billing: The bill production process includes reasonable checks to catch errors not susceptible to pre-determine balancing procedures (PPR13-4).

Either SBC Illinois is currently working to address these three items or BearingPoint is currently in the process of retesting them. Staff is hopeful that these evaluation criteria, TVV1-4, TVV1-26 and PPR13-4, will be successfully verified prior to the conclusion of Phase II. If for any reason these evaluation criteria have not been determined to be "Satisfied" prior to the conclusion of Phase II, Ms. Weber recommends that any positive Section 271 recommendation we render be contingent upon a commitment from SBC Illinois that it will address these deficiencies and that it will submit verification by an independent third party that these deficiencies have been addressed by August 2003. This recommendation would, Ms. Weber avers, be consistent with our January 14, 2003 directive regarding the BearingPoint Reports. Staff Ex. 32.0, Schedule 32.03. The Staff recommends that SBC Illinois be required to respond to these operational deficiencies and the progress of any undergoing remedial actions in its rebuttal filing currently scheduled for March 3, 2003.

Staff requests that SBC Illinois respond with its intention to rectify these 6 operational deficiencies and the progress of any undergoing remedial actions regarding these deficiencies in its rebuttal filing currently scheduled for March 3, 2003.

#### **c) Staff's Reply Position**

The Staff restates the aspects of SBC Illinois' OSS that received Not Satisfied evaluations in BearingPoint's Operational Report, and accordingly Ms. Weber, in her initial affidavit, recommended that we require SBC Illinois to address these items before we provide a positive Section 271 recommendation to the FCC. At a minimum, if we decide to provide conditional approval, Ms. Weber recommended that SBC Illinois be required to address six deficiencies (TVV1-28, TVV4-27, TVV7-14, TVV1-4, TVV1-26, and PPR13-4), as this Commission has already directed the company to address when the Commission approved Staff's January 6, 2003 (Updated on January 13, 2003) Staff Report during our January 14, 2003 bench session. Staff Ex. 31.0, Schedule 31.03. When SBC Illinois believes it has addressed these deficiencies, Ms. Weber recommends that it be required to have an independent third party evaluate the company's compliance and certify that the evaluation criteria previously found to be Not

Satisfied are in fact Satisfied<sup>88</sup>. Staff believes these items should be completed no later than November 2003.

Ms. Weber notes that, since her initial affidavit was filed on February 21, 2003, BearingPoint determined that the company now satisfies test evaluation criteria TVV1-26 (Ordering - SBC Illinois provides timely mechanized firm order confirmations (FOC) in response to electronically submitted orders<sup>89</sup>). Therefore, she makes it clear that her recommendations apply to the remaining five Not Satisfied evaluation criteria.

Ms. Weber observes that SBC Illinois responded to her recommendations in its March 3, 2003 filing, and further observes that the company generally agrees that these items should be re-tested and verified by an independent third party. Cottrell Reply Affidavit, ¶8.

For the first three evaluation criteria:

TVV1-28: Ordering - Timeliness of Service Order Completion Responses;

TVV4-27: Provisioning - Accuracy of Updates to Customer Service Record;

TVV7-14: Maintenance & Repair - Accuracy of close out coding on end-to-end trouble Faults;

Mr. Cottrell states that it anticipates the improvement actions for these three deficiencies will be completed no later than May 31, 2003, Id., which is earlier than the timeframe provided in John Hudzik's letter to the Commission on January 31, 2003. Staff Ex. 32.0, Schedule 32.03. Mr. Cottrell goes on to say that the retest should occur using commercial activity and that it expects BearingPoint to be engaged to confirm these items based upon a sampling of actual completed production orders. SBC Illinois states that the only area of disagreement between it and the Staff is of the timing of these retests.

The Staff is encouraged that SBC Illinois will complete its intended improvements for these deficiencies earlier than originally expected. Ms Weber nonetheless believes that more is at issue than just the timing aspect for the retest of these items. Specifically, Ms. Weber disagrees with Mr. Cottrell's statement about the manner in which the retests will be conducted. The independent third party conducting the verification work is the party in the best position to say actually how the retest will be conducted, and it may not necessarily be based upon only a sampling of actual completed commercial production orders. This determination has not yet been decided and any retest method should be proposed by the independent third party and approved by Staff before it is conducted. Staff is currently working with BearingPoint to understand the various retest alternatives that exist for each of these three evaluation criteria and no determination has been made at this time.

---

<sup>88</sup> In its January 14, 2003 directive, the Commission stated that BearingPoint should conduct the verification activities once SBC Illinois addressed the deficiencies noted in the Operational Report. Staff Ex. 32.0, Schedule 32.03.

<sup>89</sup> Test evaluation criteria TVV1-26 was determined to be satisfied by BearingPoint on February 27, 2003. SBC witness Cottrell in his reply affidavit ¶10 also noted this fact.

Secondly, Ms. Weber notes that SBC Illinois stated in its rebuttal testimony that it cannot guarantee that an independent third party will complete its verification work by November 2003 as Staff recommended. While SBC Illinois does not control the work of the independent third party, Ms. Weber points out that SBC Illinois is asking us to provide a positive Section 271 recommendation to the FCC in advance of the company actually proving that it currently meets all of the requirements of the 14-point checklist and public interest concerns. Ms. Weber recommends that, if we find SBC Illinois' application merits our endorsement to the FCC, the company should be required to make appropriate commitments with firm deadlines and face consequences if those commitments cannot be met. Ms. Weber continues to recommend that the company work to address the deficiencies noted in these three evaluation criteria (TVV 1-28, TVV 4-27 and TVV 7-14) and have independent third party verification of these items completed by November 2003 as a commitment for our conditional Section 271 approval.

Further, The Staff notes that, according to Mr. Cottrell, OSS compliance and improvement plans are under development in Michigan on issues that will directly benefit Illinois CLECs. *Id.*, ¶10. Mr. Cottrell attached draft versions of these compliance and improvement plans to his reply affidavit<sup>90</sup>. Ms. Weber's review of these plans leads her to conclude that only two of the three evaluation criteria (TVV 4-27, TVV7-14) at issue are included in the compliance and improvement plans being discussed in Michigan. These plans are only draft plans and updated plans based upon input from other parties in Michigan are to be filed on March 13, 2003 (one day after Staff's last opportunity to file testimony in this proceeding). The Staff is reassured that SBC plans to make the process improvements noted in the yet-to-be-finalized Michigan compliance and improvement plans and that they may also benefit Illinois CLECs. However, there has been no discussion with Illinois parties or Staff regarding the said Michigan compliance and improvement plans. Attaching draft Michigan plans to a rebuttal filing in this proceeding clearly fails to provide an opportunity for Staff or Illinois CLECs to discuss, analyze and comment on such plans. In addition, the company has made no commitments to Illinois with respect to the Michigan improvement and compliance plans and the actions being taken by the company in Michigan do not provide any guarantee they will be applied in Illinois. Therefore Staff does not consider these actions to support the company's Section 271 proceeding in Illinois.

The Staff notes that the remaining two Not Satisfied operational criteria are:

TVV1-4: Ordering - SBC Illinois provides required order functionality;

PPR13-4: Billing - Bill production process includes reasonable checks to catch errors not susceptible to pre-determine balancing procedures;

Mr. Cottrell states that these criteria continue to be tested and successful completion should be achieved before Phase II of this proceeding closes. Cottrell Reply Affidavit, ¶11. Mr. Cottrell further states that if for some reason these test evaluation criteria are not complete before the end of Phase II then SBC Illinois will commit to address these issues with BearingPoint until the issues are resolved to the

---

<sup>90</sup> Mark Cottrell Reply Affidavits, Schedules MJC-1 and MJC-3.

Commission's satisfaction. Id. Accordingly, the Staff's position is unchanged; Ms. Weber's recommendations remain as follows: If for any reason these evaluation criteria have not been determined to be "Satisfied" prior to the conclusion of Phase II, then any positive Section 271 recommendation by us be contingent upon a commitment from SBC Illinois that it will address these deficiencies and that it will submit verification by an independent third party that these deficiencies have been addressed by August 2003. The August 2003 date should be possible given the fact that SBC believes successful completion should be achieved before Phase II of this proceeding closes and if for reason this is not the case SBC should still have ample opportunity to meet this commitment, including third party verification by August 2003.

## **2. Other Operational Concerns of the CLECs**

The Staff notes that the fact that BearingPoint's test have not revealed a deficiency with SBC Illinois' OSS does not mean that the OSS is free of problems, deficiencies, or other impediments to proper functioning. BearingPoint's review of each evaluation criteria was conducted during defined time periods and the scope of BearingPoint's evaluation did not cover all aspects of SBC Illinois' OSS or all business processes that support its OSS.<sup>91</sup>

The Staff further notes that CLECs' affidavits raise many issues that deserve our full consideration. Due to the limited amount of time in this proceeding to file reply affidavits, the Staff will only comment upon a few of the CLECs' concerns. The other issues raised by parties upon which the Staff does not comment upon should be deemed no less significant or important.

The Staff observes that almost every CLEC in this proceeding that filed comments raised concerns about SBC Illinois' billing systems and processes: AT&T, Forte Communications, MCLedUSA, TDS MetroCom, and WorldCom. Both the Department of Justice (DOJ) and the FCC in previous Section 271 proceedings have recognized that proper billing is essential to competition<sup>92</sup>. The DOJ in its Michigan Section 271 evaluation stated that the Michigan Commission should assure itself that the measures SBC is taking will resolve SBC's remaining billing problems.

The Staff draws our attention to the fact that SBC Illinois did respond to many of the CLECs concerns in its reply affidavits<sup>93</sup>. SBC Illinois' billing systems are complex, and handle the large volume of commercial billing activities that SBC states. SBC states that it completed approximately 220,000 rate table updates and that more than

---

<sup>91</sup> For example as BearingPoint responded during the February 5, 2003 hearing it did not perform any volume or functional testing on the LSOG5 version of the Company's EDI or CORBA application to application interfaces nor did it perform any actual tests of the Company's bill reconciliation process (BearingPoint response to Staff hearing questions BE/Staff 7, 8).

<sup>92</sup> Evaluation of the U.S. Department of Justice, In re: *Application by Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, FCC. CC Docket No. 01-0138 (July 26, 2001) at 11. FCC Pennsylvania Order ¶23

<sup>93</sup> Phase II Rebuttal Affidavit of Mark J. Cottrell and Denise Kagan Regarding Billing on Behalf of SBC Illinois. Phase II SBC Billing Rebuttal Affidavit.

150,000 of these rate table updates were to support CLEC billing. This fact alone, avers the Staff, shows the importance of rate updates and further indicates that the volume of records that need to be changed or loaded in order to have rates appear correctly on CLEC bills is quite great. In the Staff's view, SBC Illinois must be able to effectively manage these rate table updates; otherwise, it is apparent that the bills will not be correct. The comments of the CLECs appear to contradict the statements of the company that rates are correctly recorded on CLEC bills. More discussion on this issue should occur.

Also, contrary to SBC Illinois' statements that the billing systems, processes and procedures were the subject of a comprehensive independent third-party review that SBC Illinois passed with "flying colors," Ms. Weber notes that the BearingPoint review had limited coverage to the array of billing functions SBC Illinois provides<sup>94</sup>. In addition, there were no bill reconciliation or dispute functions tested other than having the specific procedures reviewed<sup>95</sup> and for those billing functions that were tested it took more than one full year and multiple retests for SBC Illinois to pass the BearingPoint billing tests conducted. Also, during the test period the company did not apply all rate changes, etc. that usually occur on an account to the test CLEC bills and therefore the test did not reflect the day-to-day reality of the business<sup>96</sup>. Moreover, SBC's statement that BearingPoint confirmed that its wholesale bills are clear and auditable is incorrect. BearingPoint in fact made no such statement; rather it is an interpretation by SBC based upon the fact that BearingPoint said the bills conform to the detail and format of the BOS or industry specifications. These two statements are, the Staff notes, different from one another. Simply because a bill conforms to the detail and format of the BOS or industry specifications does not mean that a bill is clear and auditable. Industry specifications are guidelines and not exact standards and therefore do not comport directly to audit specifications. Also, Staff notes that if SBC believed its bills were completely auditable, it would not have filed an improvement plan for bill auditability with the Michigan Commission in its 271 proceeding there. In addition, SBC Illinois indicates it will make modifications to the Bill Auditability improvement plan filed in Michigan on March 13, 2003 and that the improvement plan will apply equally to SBC Illinois' operations. However, nowhere within the reply affidavits of SBC Illinois has it made a specific commitment to carry out these improvements plans in Illinois or to provide periodic updates to us on its plan. The company also has not sought input from Staff or all Illinois CLECs on this billing auditability issue.

SBC Illinois also indicates that many of the claims raised by CLECs describe incidents that are either outdated, involve small disputed amounts, or stem from one time system changes and, thus, have no competitive impact on CLECs. CLECs, on the other hand, state that the incidents are occurring repeatedly, SBC takes too long to

---

<sup>94</sup> Tr. at 2355-2356. "BearingPoint reviewed the aspects of SBC billing processes as specified in the master test plan with the exception of the following: the timeliness of daily usage feed (DUF) records return process, the timeliness of the DUF returned status mechanism, the prioritization of calls for billing support, the completeness and accuracy of debit and credit adjustments, the completeness and accuracy of late charges."

<sup>95</sup> Tr. at 2352-2353.

<sup>96</sup> Tr. at 2351-2352.

correct the issues<sup>97</sup>, and these issues are impacting CLECs' ability to provide service to their customers.

It is the Staff's position that we need to be sure that the billing concerns of the CLECs are reconciled before granting a positive Section 271 recommendation to the FCC. If we decide to grant approval without ensuring these deficiencies or areas of concern are addressed, then SBC Illinois should provide specific commitments to improve its billing deficiencies as a condition of Section 271 approval and work collaboratively with Staff and the CLECs in the state of Illinois to develop an action plan of the steps it will take to correct its deficiencies.

### **3. Commission Analysis And Conclusion**

Operations Support Systems, or OSS, refers to the functions of wholesale Pre-ordering, Ordering, Provisioning, Maintenance and Repair and Billing. Efficient OSS functions are vital to a healthy competitive market, and therefore necessary for Section 271 approval.

As reported by BearingPoint in its December 20, 2003 Operational Report of its independent third party review, SBC Illinois' is deficient with respect to six aspects of its OSS that relate to its Ordering, Provisioning, Maintenance and Repair and Billing functions. As of the filing of proposed orders and briefs in this proceeding SBC Illinois was still deficient with respect to four aspects of its OSS. We consider the BearingPoint report to be compelling evidence, which SBC Illinois has not overcome at this time.

The Staff has proposed detailed remedial measures with respect to the BearingPoint findings. Staff's recommendations are as follows:

(1) Consistent with the Commission's direction on January 14, 2003, SBC Illinois should address its areas of deficiencies with respect to timeliness of service order completion (SOC) responses (BearingPoint evaluation criteria TVV1-28), accuracy of updates to customer service records or CSRs (BearingPoint evaluation criteria TVV4-27), and accuracy of close out coding on end-to-end trouble faults (BearingPoint evaluation criteria TVV7-14).. If this Commission decides to provide a positive Section 271 recommendation to the FCC before SBC Illinois has addressed these items then the Commission's positive Section 271 recommendation to the FCC should be contingent upon a commitment from the company that it will address these three operational deficiencies by July 2003 and the independent third party provides verification that these deficiencies have been addressed by November 2003. The verification plan should be proposed by the independent third party and approved by Staff before it is conducted.

---

<sup>97</sup> Initial Phase II Comments of McLeodUSA Telecommunications Service, Inc. and TDS Metrocom, LLC (Confidential) at 24-26., Initial Phase II Affidavit of Sarah DeYoung and Walter W. Willard on Behalf of AT&T Communication of Illinois, INC., TCG Chicago, TCG Illinois and TCG St. Louis. AT&T Ex. 3.0 (P) ¶¶44-49., Phase 2 Initial Affidavit of Sherry Lichtenberg on Behalf of Worldcom, Inc. WorldCom Ex. 3.3 ¶¶7-16. Initial Phase II Affidavit of Forte Communications, Inc. ¶5.

(2) Consistent with the Commission's directive on January 14, 2003, SBC Illinois should address its areas of deficiency with respect to its order functionality (BearingPoint evaluation criteria TVV1-4) and its internal bill accuracy controls (BearingPoint evaluation criteria PPR13-4). Since SBC Illinois has been unable to submit verification that these deficiencies have been addressed in its rebuttal or surrebuttal filings, the Commission should make its positive Section 271 recommendation contingent upon a commitment from SBC Illinois that it will address these deficiencies and have them verified by an independent third party no later than August 2003.

The Commission needs to be sure that the billing concerns of the CLECs are reconciled before granting a positive Section 271 recommendation to the FCC. If this Commission decides to grant approval without ensuring these deficiencies or areas of concern are address then SBC Illinois should provide specific commitments to improve its billing deficiencies as a condition of Section 271 approval and work collaboratively with Staff and the CLECs in Illinois to develop an action plan of the steps it will take to correct its deficiencies.

Therefore, we find the Staff's recommendations to be reasonable and necessary, and we hereby adopt them.

### **C. Performance Measurement Data Analysis**

Checklist item 2, regarding access to network elements/OSS, encompasses the following PMs: 1.1, 1.2, 2, 4, 5, 7, 7.1, 10, 10.1, 10.2, 10.3, 10.4, 11, 11.1, 11.2, 13, 14, 15, 16, 17, 18, 19, 22, 25, 27\*, 28\*, 29\*, 30\*, 31\*, 32\*, 33\*, 35\*, 43\*, 44\*, 45, 46, 47, 48, 49, 50, 55, 55.1, 56, 56.1, 58, 59, 60, 61, 62, 63, 73, 74, 75, 95, 120, 121, IN 1, WI1, WI 2, MI 2, MI 13, MI 14, MI15, CLECW1 6, CLECW1 7, CLECW1 8, CLECW1 9. PMs 27 through 44, highlighted with a "\*", were assessed relative to the UNE loop and port combinations sub-measures only. All worksheets are included in Schedule 29.02.

#### **Staff's Initial Position**

Given the facts provided in Ms. Weber's affidavit with respect to the accuracy and reliability problems with the performance measurement data SBC reports, it is her opinion that we cannot perform a valid assessment of the three months of performance measurement data (September, October and November 2002) SBC Illinois submitted as evidence of its compliance with the Section 271 checklist in this proceeding. Notwithstanding this, for reasons explained in Staff witness Samuel S. McClerren's testimony, Staff has provided its assessment of SBC Illinois performance measurement data. Ms. Weber has analyzed preordering and ordering performance measurement data applicable to Section 271 checklist item (ii) as provided by the company. No diagnostic measures have been included in her analysis.

Staff affiant Dr. Genio Staranczak describes in his affidavit the statistical guidelines Staff is following for its analysis of the performance measurement data and these are the general guidelines Ms. Weber followed for my analysis. Staff Ex. 30. Other Staff members provided evaluations for the remaining performance measurement data submitted by SBC Illinois. Staff affiant Samuel S. McClerren summarizes all of



Staff's analysis on SBC Illinois' submitted performance measurement data, and provides Staff's opinion regarding whether the data presented by the company demonstrates SBC Illinois' compliance with the 14 point checklist or aspects of the 14 point checklist. Staff Ex. 29. The opinion Mr. McClerren provides is premised upon the assumption that the performance measurement data SBC Illinois' submitted in this proceeding is accurate and can be relied upon.

#### Staff's Reply Position

In light of facts provided in Ms. Weber's initial affidavit with respect to the accuracy and reliability problems with SBC Illinois' performance measurement data it reports, the Staff takes the position that neither it nor SBC Illinois can perform a valid assessment of the three months of performance measurement data (September, October and November 2002) SBC Illinois submitted as evidence of its compliance with the Section 271 checklist in this proceeding. Notwithstanding this, for reasons explained in Staff witness McClerren's initial testimony, Staff provides its assessment of SBC Illinois performance measurement data.

Review of the remedied Checklist Item 2 sub-measures provides the following information:

<p style="text-align: center;"><b>Checklist Item 2</b>  Summary of Performance  Access to Network Elements - OSS</p>				
	Sept. '02	Oct. '02	Nov. '02	Total
Number of Sub-measures Missed	20	20	18	13
Number of Sub-Measures Passed	174	176	175	181
Total Number of Sub-Measures	194	196	193	194
Percentage of Sub-Measures Passed	89.7%	89.8%	90.7%	93.3%

#### **a) Pre-Ordering**

44. There are four pre-ordering PMs applicable to checklist (ii), PMs 1.1, 1.2, 2 and 4. Pre-ordering measurements track the activities and transactions that carriers initiate to gather information regarding customers, or the availability of services to provide to customers, prior to submitting a formal request or service order to SBC Illinois. If pre-ordering information is inaccurate, or delayed, CLECs may be placed at a competitive disadvantage, since pre-ordering functions are usually executed live while a

customer or potential customer is speaking with a CLEC representative. SBC Illinois passed these four pre-order PMs.

#### Staff's Initial Position

Pre-ordering measurements track the activities and transactions that carriers initiate to gather information regarding customers, or the availability of services to provide to customers, prior to submitting a formal request or service order to SBC Illinois. Ms. Weber notes that, if pre-ordering information is inaccurate, or delayed, CLECs may be placed at a competitive disadvantage, since pre-ordering functions are usually executed live while a customer or potential customer is speaking with a CLEC representative. Accordingly, benchmarks and parity standards have been developed for the pre-ordering measures collaboratively by SBC Illinois and the CLECs.

#### **Pre-Ordering Measurement Results**

PM	Description	# of sub-measures	Parity/ Benchmark
1.1	Average response time to provide loop qualification for xDSL	1	Parity
1.2	Percent of accurate DSL actual loop makeup information provided to carrier	2	Parity
2	Percent of responses received within X seconds for pre-order interfaces by function	66	Benchmark
4	Percent of time OSS interface is available compared to scheduled availability by OSS interface	18	Benchmark

In her affidavit, Ms. Weber examined four pre-ordering measures that apply to checklist (ii), performance measure 1.1, 1.2, 2 and 4. PM 1.1 and 1.2 are both parity measures with limited or no sub-measures and PM 2 and 4 both have sub-measures and have a benchmark standard. Based upon Ms. Weber's analysis, SBC Illinois passed these four pre-order performance measures.

Performance measure 1.1 and 1.2 (and both sub-measures for PM 1.2) are within parity for the three months of data filed, as well as for December 2002 results. However, the average response time for manual loop make-up information, PM 1.1, increased significantly in the months of November and December 2002, to 14.75 and 16.24 hours respectively from 4.81 hours in October 2002. Mr. Ehr's explanation provided at the hearings sufficiently explained the shift. Tr. at 3064-3069. In addition, the response time for SBC Illinois' affiliate also arose at a similar rate. Accordingly, Ms. Weber does not believe that the company performance in this area should be concerning.

For the three months of data submitted by the company for performance measure 2, Ms. Weber opines that the company met the benchmarks defined for 48 of

the 66 sub-measures, and failed the benchmark standard for three sub-measures according to the statistical guidelines. The remaining 14 sub-measures did not have sufficient data to evaluate. Therefore, if the sub-measures without sufficient data are eliminated, Ms. Weber notes that the company met the benchmark standard for 49 of 52 sub-measures, or 94% of the sub-measures.

For the three sub-measures the company failed, it did not meet the benchmarks in two of each of the last three months. For sub-measure 15.2, Percent responses received within 13 seconds for a request for customer service record – EDI LSGO4/CORBA, the company missed the 95% benchmark by 2.72% for November and by 4.5% in September. By December 2002 the result was a passing 99%. For sub-measure 16.1, Percent responses received within 8.0 seconds – Directory listing Inquiry – EDI LSGO4/CORBA, the company failed to meet the benchmark for September and October 2002 but was well above the 90% benchmark at 96% in November 2002 and was at 98% for December 2002. For sub-measure 18.1, Percent responses received within 1.0 second – Service Appointment Scheduling (due date) – EDI LSGO 4/CORBA, the company's performance has dropped quite substantially the last few months. The sub-measure has a benchmark of 90% and performance for October was at 86%, November at 84% and December down at 35.38%. However, for the companion sub-measure 18.2, Percent Responses Received within 2.0 seconds – Service appointment scheduling (due date) – EDI LSGO4/CORBA, the company has consistently exceeded the 95% benchmark. If the company had missed both of these measures, then Ms. Weber views it as a potential cause for concern.

Performance measure 4, according to the statistical guidelines developed, exceeded the benchmark for each of its 18 sub-measures.

#### Staff's Reply Position

Staff's position is unchanged with respect to the pre-ordering performance measurements.

### **b) Ordering**

45. Ordering PMs track the various activities and transactions that are involved in the submitting and processing of service orders for requesting new service, modifying existing service or for requests to remove services or features. Delays in the processing or receipt of ordering related transactions may competitively disadvantage CLECs, since CLECs rely on SBC Illinois to process and provide status of service orders on their behalf for their own customers.

#### Staff's Initial Position

Ordering performance measurements track the various activities and transactions that are involved in the submitting and processing of service orders for requesting new service, modifying existing service or for requests to remove services or features. Delays in the processing or receipt of ordering related transactions may

competitively disadvantage CLECs, since CLECs rely on SBC Illinois to process and provide status of service orders on their behalf for their own customers.

### Ordering Measurement Results

PM	Description	# of sub-measures	Parity/ Benchmark
5	Percent of Firm Order Confirmations (FOCs) returned within "X" hours	54	Benchmark
7	Percent mechanized completion notices returned within one hour of completion in ordering systems	3	Benchmark
7.1	Percent mechanized completions notices returned within one day of work completion	4	Benchmark
10	Percent mechanized rejects returned within one hour of receipt of the reject in MOR	1	Benchmark
10.1	Percent mechanized rejects returned within one hour of receipt of order	1	Benchmark
10.2	Percent manual rejects received electronically and returned within five hours	1	Benchmark
10.3	Percent of manual rejects receive manually and returned within five hours	1	Benchmark
10.4	Percentage of orders given jeopardy notices (as percent of total orders completed in period)	10	Parity
11.1	Mean time to return manual rejects received via an electronic interface	1	Benchmark
11.2	Mean time to return manual rejects received through a manual process	1	Benchmark
12	Percent of mechanized orders completed as ordered	1	Parity
13	Percent of orders from receipt to distribution that progress mechanically through to the company provisioning systems (flow through)	6	Both Benchmark and Parity
MI13	Percent loss notifications sent within one hour of service order completion	4	Benchmark

There are thirteen non-diagnostic ordering performance measures applicable to checklist (ii) that I evaluated. SBC Illinois has only passed 4 of the 13 ordering performance measures; PM 7, 10, 11.2 and 12. The company failed the remaining 9 ordering performance measures reviewed and the degree of failure is extremely significant. In her affidavit, Ms. Weber provides examples of these significant failures.

**(1) Resolution of Problems with Key PM 5 — Percent Firm Order Confirmation Returned within X Hours**

47. PM 5 is a benchmark measure with 54 sub-measures. The company met the benchmark for 29 sub-measures, missed the benchmark for 4 sub-measures and there was not sufficient data for the remaining 21 sub-measures. Overall the company met the benchmark standards for 29 of 33 sub-measures (if sub-measures with insufficient data are removed) or 88% of the sub-measures, which by the statistical guidelines established by Staff for this proceeding indicates that the company has failed in its performance for PM 5, and is not delivering timely firm order confirmations (“FOCs”) to CLECs. CLECs require timely FOC notices in order to serve their own customers. FOC notices are returned to CLECs by SBC Illinois and indicate that the CLECs request/order has been accepted and it also communicates the committed due date for completion of the order.

Performance measure 5 is a benchmark measure with 54 sub-measures. The company met the benchmark for 29 sub-measures, missed the benchmark for 4 sub-measures and there was not sufficient data for the remaining 21 sub-measures. Overall, the company met the benchmark standards for 29 of 33 sub-measures (if sub-measures with insufficient data are removed) or 88% of the sub-measures, which by the statistical guidelines established by Staff for this proceeding indicates the company has failed in its performance for PM 5, and is not delivering timely firm order confirmations (“FOCs”) to CLECs. The specific sub-measures SBC Illinois has failed are electronically and manually submitted UNE-P complex business (1-200) < 24 hours, electronically submitted LNP Only (20+), manually submitted UNE xDSL Loop (1-49) < 24 hours. CLECs require timely FOC notices in order to serve their own customers. FOC notices are returned to CLECs by SBC Illinois and indicate that the CLECs request/order has been accepted and it also communicates the committed due date for completion of the order. Ms Weber advises us to require the company to address these deficiencies prior to our providing a positive Section 271 recommendation to the FCC.

Mr. Ehr in his reply affidavit provides a response to the concerns I raised in my initial affidavit regarding PM 5, percent firm order confirmations (FOCs) returned within “X” hours. Mr. Ehr further states that the four sub-measures for PM 5 that I identified as “misses”, represent in total only 0.04% (191) of the 503,632 FOCs reported for September through November 2002. Ehr Reply Affidavit, ¶18. Mr. Ehr is correct in that the four performance measures the company missed have a lower volume of orders than the remaining sub-measures. The Staff is of the opinion that the company should address these deficiencies, but no longer of the opinion that they must be addressed prior to us providing a positive Section 271 recommendation to the FCC given the minimal number of FOCs affected given the data reported.

## **(2) Problems with Key PM 7— Percent Mechanized Completion Returned within One Day**

48. PM 7.1 measures the percent of mechanized completion notices returned within one day of work completion. PM 7.1 has four sub-measures and according to the statistical guidelines the company has failed all four sub-measures.

PM 7.1 measures the percent of mechanized completion notices returned within one day of work completion. PM 7.1 has four sub-measures and according to the statistical guidelines the company has failed all four sub-measures. The fourth sub-measure tracks the completions returned for LNP only orders and the benchmark established is that 99% of completions will be returned within one day. SBC Illinois has reported 53.57%, 46.09% and 69.84% completion rates for the months from September – November 2002, which is far short of the 99% benchmark standard. BearingPoint in its December 20, 2003 report that the company is also failing in its performance of PM 7.1, with respect to the Test CLEC data. While Ms. Weber understands that SBC Illinois is currently working to correct these deficiencies she recommends that we require SBC Illinois to address the issues submit independent third party verification to ensure that the issues have been resolved.

For PM 7.1, percent of mechanized service order completions (SOCs) returned within one day of work completion, Mr. Ehr points solely to the fact that the six month review collaborative agreed to decrease the benchmark from 99% to 97% and that if the new benchmark is applied then the company would have met the standard for three of the four sub-measures for PM 7.1. Ehr Reply Affidavit, ¶25. Regardless of any future change to the performance measure, which actually will not be implemented by the company until March 2003, Ms. Weber conducted her analysis based upon the business rules filed by the company in this proceeding. These business rules state that the company is to meet a 99% benchmark and clearly from the data presented in the table below (see the bold entries) one can see the company has consistently failed to meet the standard for all four disaggregations.

	Sept 2002	Oct. 2002	Nov. 2002	Dec. 2002	Jan. 2003
LNP	<b>53.57 %</b>	<b>46.09 %</b>	<b>69.84 %</b>	<b>72.46 %</b>	<b>92.01 %</b>
Resale	<b>97.27 %</b>	<b>98.89 %</b>	<b>98.83 %</b>	<b>95.27 %</b>	<b>97.28 %</b>
UNE	99.24 %	<b>96.65 %</b>	99.08 %	<b>97.42 %</b>	<b>98.17 %</b>
Combinations	<b>98.74 %</b>	<b>98.65 %</b>	<b>97.04 %</b>	99.59 %	<b>98.83 %</b>

The Staff also reiterates that BearingPoint in its December 20, 2003 Report found that the company failed in its performance of PM 7.1 (evaluation criteria TVV1-28), with respect to the Test CLEC data and continues to fail as of today. It appears SBC Illinois is currently working to correct these deficiencies but, as one can see from the most available data on this matter (i.e., December 2002, January 2003), the company has not satisfied this deficiency.

### **(3) Problems with Key PM 10 — Percent of Manual and Mechanized Rejects**

49. PM 10.1, 10.2 and 10.3 all report on percent of reject messages returned within X hours from receipt of the order. PM 10.1 specifically captures mechanized rejects, PM 10.2 captures manual rejects received electronically and 10.3 reports manual rejects receive manually. In the last year, the only instance where performance has been above the 97% benchmark is for PM 10.1, in the months of August and October 2002. For all other months, and for each of the three performance measures, the company failed to meet the benchmark.

PM 10.1, 10.2 and 10.3 all report on percent of reject messages returned within X hours from receipt of the order. 10.1 specifically captures mechanized rejects, PM 10.2 captures manual rejects received electronically and 10.3 reports manual rejects receive manually. In the last year, the only instance where performance has been above the 97% benchmark is for PM 10.1, in the months of August and October 2002. For all other months, and for each of the three performance measures, the company failed to meet the benchmark. Ms. Weber recommends that we require the company to address these deficiencies as CLECs require timely notification of errors on their orders in order to be able to provide efficient and timely service to their customers.

As Ms. Weber noted in her original affidavit PM 10.1, 10.2 and 10.3 all report on percent of reject messages returned within X hours from receipt of the order. 10.1 specifically captures mechanized rejects, PM 10.2 captures manual rejects received electronically and 10.3 reports manual rejects received manually. The company has failed to meet the 97% benchmark consistently for PM 10.2 and 10.3 and has problems off and on with 10.1. The Staff is of the opinion that the company should be required to address these deficiencies, as CLECs require timely notification of errors on their orders in order to be able to provide efficient and timely service to their customers.

PM 10.4 is a parity measure that reports the percent of orders given jeopardy notices and has 10 sub-measures. The company has repeatedly failed to meet the parity standard for the majority of the 10 sub-measures of PM 10.4.

### **(4) Resolution of Problems with Key PM 11.1 — Mean time to return manual rejects received via an electronic interface**

For PM 11.1, mean time to return manual rejects that are received via an electronic interface, Mr. Ehr states that SBC Illinois' performance was outside the five hour benchmark during two of the three study period months but that the difference was not material, exceeding the benchmark in September and November by .48 and .04 respectively. Ehr Reply Affidavit, ¶21. Mr. Ehr further states that the issue has been addressed in the most recent six-month collaborative process. In that collaborative process, the parties agreed: to revise the benchmarks to reflect the industry's expectation that a reject or a FOC be delivered within the same specified interval; the mean time to return manual rejection notices would be consolidated under PM 11; and SBC Illinois would have met the newly agreed-upon benchmarks. Id. However, the

newly agreed upon performance measure for PM 11 removed the benchmark all together. Therefore, the company would have “met” the new benchmark if applied, since in fact there is no benchmark to speak of. Simply because the new definition of the performance measure does not specify a benchmark, it does not mean that it is acceptable for SBC Illinois’ performance in this area to degrade. SBC Illinois’ performance for PM 11.1 reported in December 2002 and January 2003 (the two months of performance measure data posted since the study period) was 5.47 hours and 5.74 hours respectively, which are outside the current 5-hour benchmark. Therefore, the company’s performance for PM 11.1 is not within benchmark limits for four of the last five data months. Simply because the six month collaborative process agreed to remove the benchmark for this measurement, starting with data to be reported on May 20, 2003, the company should not allow its performance with respect to the return of manual rejects received electronically to fall and currently the company is not meeting the defined performance standards.

**(5) Problems with Key PM 13 -- Percent of Orders from Receipt to Distribution that Progress Mechanically through to the Company Provisioning Systems (i.e “flow through”).**

PM 13 has six sub-measures (with data) that are disaggregated by product type. The company failed to achieve the 2 out of 3 month standard for 4 of those 6 disaggregations. In a study of the data for December 2002 and January 2003 the company continued to fail to meet the standards for 4 out the 6 sub-measures (UNE-P, Resale, LSNP and UNE-Loops). Therefore, this remains a Key PM that needs to be improved.

For PM 13, order process percent flow through, Mr. Ehr states that the measure is a classic example of a measure that must be viewed in the context of related measures. Ehr Reply Affidavit, ¶26. The Staff concurs with this, and therefore believes it is important to look at the diagnostic results for performance measure 13.1, Total Order Process Percent Flow Through along with the results for PM 13.

First, if one is to look closely at the results for PM 13, which has six sub-measures (with data) that are disaggregated by product type, the company failed to achieve the 2 out of 3 month standard for 4 of the 6 disaggregations. In a study of the data for December 2002 and January 2003 the company continued to fail to meet the standards for 4 out the 6 sub-measures (UNE-P, Resale, LSNP and UNE-Loops). Mr. Ehr further states in his reply affidavit that the parity standard, which is applied for all but one of the disaggregations, requires comparison of dissimilar processes and therefore the “apples-to-oranges” comparison means one should take the parity results with a grain of salt. Ehr Reply Affidavit, ¶27. If this is the case, the company has utterly failed to explain why it failed to suggest the parity comparison be done away with, and ask that benchmark standards be applied in the latest six-month review session. Absent a change in the business rules the company is required to meet the parity requirement and benchmark requirements established and it clearly is not meeting these for PM 13.



If one is to look at the company's performance reported in PM 13.1, which is the companion performance measure to PM 13, as Mr. Ehr suggested be done, the company has decreased its total order process percent flow through for three of the six disaggregations over the past year. This means that the company on a whole is flowing through fewer orders for UNE Loops, Resale and LNP now than it did 12 months ago. In addition, the total percent flow through statistics for Resale are in the low 60% range, UNE loop in the high 60% range, LNP in the 30% range and LSNP floating between 15-30%. CPO is doing much better at 80% and line sharing is at the high 80% mark. The total percent flow through rates the company is currently reporting are not impressive, therefore it is all that more important for the product categories the company communicates to the CLECs that are supposed to flow through actually do. Regardless of Mr. Ehr's remarks excusing the company's performance for PM 13 my review of its companion measure PM 13.1 indicates that the Staff's original conclusion that the company fails to perform with respect to PM 13 remains valid and effectively un rebutted.

It appears that the company's performance with respect to performance measure MI 13, percent mechanized line loss notifications returned within one day of work completion, has improved in the data reported for December 2002 and January 2003. However, as Ms. Weber stated in her initial affidavit, the measure as currently defined does not accurately reflect the company's performance in delivering line loss notices to CLECs, Staff Ex. 31.0, ¶15, therefore this data can not be proof of the company's commitment to deliver accurate or timely line loss notices. In addition, the company has failed to include in performance measure MI 13 any line loss notices generated in winback situations (when SBC takes a customer that had previously left and gone to another local carrier back as a customer)<sup>98</sup>. It appears that the majority of CLEC losses are due to winback situations by SBC and SBC does not currently report these line loss notices as part of MI 13. Therefore, I repeat that data reported for MI 13 by the company cannot be used to support its position that the company is sending timely or accurate line loss notices. The company does not plan to implement corrections to MI 13 until April 20, 2003.

### **c) Provisioning Accuracy**

50. The Company failed PM 29. Worse, sub-measure 29-7, installations not completed as a result of a company caused missed due date for UNE-P business field work, have been increasing in the three months of data reviewed for this proceeding. Company caused missed due dates for CLEC customers means that the customer expected service to be provisioned by a certain date, and SBC Illinois did not provision that service on the expected date. The Company's performance for PM 35-7, trouble reports received within 30 days of installation regarding UNE-P business field work, was also fail. Trouble reports received within 30 days of installation typically means that the service was not properly provisioned in the first place.

---

<sup>98</sup> FCC Docket No. 03-16. AT&T Filing, Joint Reply Declaration of Karen W. Moore, Timothy M. Connolly, and Sharon E. Norris on Behalf of AT&T Corp., March 4, 2003.

51. SBC Illinois reported data indicates that for PM 37-4, UNE business, there is a statistically higher number of trouble reports for SBC Illinois facilities provisioned to CLEC customers than there are numbers of trouble reports to SBC Illinois customers.

**(1) Problems with Key PM MI-2 — Percent of Orders Given Jeopardy Notices within 24 Hours of the Due Date**

52. With a statistical guideline of 90%, and an actual sub-measure pass rate of 50%, SBCI failed to provide MI 2 in a non-discriminatory manner. SBC Illinois failed sub-measure MI 2-2, regarding residential field work, sub-measure MI 2-8, regarding unbundled loops without LNP, and sub-measure MI 2-10, regarding UNE-P. PM MI 2 assesses the percent of orders given jeopardy notices within 24 hours of the due date. Jeopardy notices to a CLEC inform it that its' customer's order may not be provisioned as it was promised by SBC Illinois. The CLEC may either contact SBC Illinois to expedite efforts, or contact their customer to let the customer know the order may not be provisioned as expected, or both.

SBCI alleges the problem with this PM is that it is a parity measurement with no retail comparison. Further, SBCI states that it has reached an agreement with the CLECs on a benchmark for this measure, and that the agreed-upon change is before the Commission for approval. However, this change has not been approved by the Commission, not do we know how SBCI will operate in relation to this new measure – it is an unknown, and something which this Commission cannot rest upon. What we can firmly decide this issue upon is what is known, which is the evidence that has been provided in this proceeding. SBC Illinois' reported data does not support its argument that the reliance on parity is the problem. Consider the following table for the sub-measures failed by SBC Illinois in PM MI 2:

SBC Illinois PM Performance - PM MI 2 Percent Orders Given Jeopardy Notices Within 24 Hours			
Sub-measure	Sep. 02	Oct. 02	Nov. 02
MI 2-1	66.10%	64.71%	59.21%
MI 2-8	12.50%	14.45%	13.59%
MI 2-10	40.47%	46.98%	64.33%

ICC Staff Ex. 41.0 ¶73 (citing Ehr Direct Affidavit, Attachment A)

74. SBC Illinois' performance on PM MI 2 would not appear to be resolved by the simple adoption of a benchmark, given that SBC Illinois would need to meet or exceed the standard for more than 95% of the occurrences.<sup>99</sup> As of March 5, 2003, there was no information posted by SBC Illinois to the CLEC Online web site pertaining

<sup>99</sup> There are three exclusions added to PM MI 2's new business rule in Version 1.9. However, there is no evidence in this proceeding that those exclusions would drive the table's percentages up to 95%. Further, as previously indicated, it remains Staff's position that revisions to Version 1.8 of the business rule should not be addressed in this proceeding.

to SBC Illinois' performance relative to PM MI 2. Accordingly, the Commission agrees with Staff that this PM continue to remain a "Key PM's for Improvement."

**(2) Problems with Key PM MI-14 — Percent of Completion Notifications Returned within "X" Hours of Completion of Maintenance**

53. With an actual sub-measure pass rate of 20%, and considering SBCI's overall performance, SBCI failed to meet provide MI 14 in a non-discriminatory manner. MI 14 assesses the percent completion notifications returned within "X" hours of completion of maintenance. SBC Illinois failed to provide adequate service for sub-measure MI 14-1, regarding resale manual, sub-measure MI 14-3, regarding UNE Loops Manual, sub-measure MI 14-4, regarding UNE Loops Electronic, and sub-measure MI 14-5, regarding UNE-P Manual. Completion notifications are important because they indicate to the CLEC when they have a new customer, and may begin billing.

SBCI affiant Ehr points out that as of February 1, 2003, SBCI has replaced the fax process (through discussions and agreement with CLECs in the CLEC User Forum) with the posting of completion notices to its CLEC Online web site,<sup>100</sup> and that the PM business rule has been changed to also note this change in process. However, as of March 5, 2003, SBC Illinois has not updated its information posted to the CLEC Online web site regarding its performance relative to PM MI 14. Since there has been no definitive action to affirm SBCI's statement the Commission agrees with Staff that PM MI 14 remains an issue and should be listed as a "Key PM's for Improvement."

**d) Billing**

Billing has eight performance measures: 14, 15, 16, 17, 18, 19, 22 and 25. SBC Illinois passed seven of these performance measures and failed one performance measure – PM 17. These worksheets may be found in Schedule 29.02.

**(1) Problems with Key PM 17— Percent of On-time Service Orders in Both ACIS and CABS that Post within a 30-Day Billing Cycle**

PM 17 examines the percent of on-time service orders in both ACIS and CABS that are reported ("posted") within a designated interval. Orders are measured from order completion to bill posting.<sup>101</sup> For performance measure 17 there were on average three hundred thousand transactions per month over the September to November time period. SBC Illinois issues a lot of bills and Competitive Local Exchange Carriers are entitled to receive their bills in a timely manner. Timely billing enables CLECs to know what their charges are and also enables them to quickly spot errors in billing.

---

<sup>100</sup> Ehr Rebuttal Affidavit, paragraph 34.

<sup>101</sup> ACIS and CABS are acronyms for customer information and billing systems utilized by SBC Illinois.

**(a) Staff's Initial Position**

Staff witness Genio Staranczak, a principal economist in the Telecommunications Division of the Commission, presented testimony regarding his review, analysis and assessment of SBC Illinois performance with respect to performance measures related to billing. ICC Staff Ex. 30.0 at ¶¶ 1, 5. Mr. Staranczak explained that there are 8 non-diagnostic performance measures – PMs 14, 15, 16, 17, 18, 19, 22 and 25 -- associated with billing. *Id.* at ¶ 25. For the three month test period, SBC Illinois' failed PM 17 under Staff's statistical guidelines discussed above, but passed the remaining seven. *Id.* Mr. Staranczak explained that PM 17 examines the percent of on-time service orders in both ACIS and CABS that post within a designated interval. *Id.* at ¶ 26. Orders are measured from order completion to bill posting. For UNE-P and line sharing, an order is considered on time if it is posted accurately within the first bill cycle after a ten business day processing interval, which begins with order completion. All other orders will be considered on time if posted within the first bill cycle following order completion. *Id.*

Mr. Staranczak explained that although the applicable standard for PM17 is parity with SBC retail, SBC uses affiliate data as the standard when computing hits or misses in its HOMR report. *Id.* at ¶ 27. Nevertheless, SBC does not attain parity with its affiliate during any month over the September to November three month period for which SBC has filed data. *Id.* Whereas affiliate service orders were billed within the designated interval approximately 99% of the time during the three month period in question, only 94% of competitors' orders were billed within the designated interval. *Id.* Data for December 2002 also indicates that SBC has not achieved parity with its affiliate operations in the most recent month for which data is available. *Id.* Mr. Staranczak stated that billing timeliness is a persistent problem for SBC given that the data also indicates that the company has achieved parity with affiliate operations in only two months during calendar year 2002. *Id.* Similarly, SBC has achieved parity with its retail operations in just 2 months of calendar year 2002. *Id.*

Mr. Staranczak pointed out the large number of observation for performance measure 17, with an average of three hundred thousand transactions per month over the September to November time period. *Id.* at ¶ 28. Mr. Staranczak explained why Competitive Local Exchange Carriers ("CLECs") must receive their bills in a timely and accurate manner. *Id.* Timely billing enables CLECs to know what their charges are and also allows them to quickly spot errors and unexpected fees. If CLECs receive untimely and inaccurate bills from SBC Illinois, then CLEC customers may in turn receive untimely and inaccurate bills from CLECs. Furthermore, end user customers may blame the CLECs for billing problems that were caused by SBC Illinois. In this situation, SBC Illinois billing inaccuracies could cause CLEC customers to become dissatisfied with their CLEC service and switch back to SBC Illinois. *Id.*

Accordingly, Staff recommended that the Company explain in its rebuttal affidavits why this problem is occurring and demonstrate that proper steps have been taken to ensure that this problem is corrected and will not recur on a going forward basis. *Id.* at ¶ 29. Staff cautioned that failure to make this showing may force the

Commission to find that SBC's provisioning in this regard with respect to billing is discriminatory. *Id.* Alternatively, even if the Commission does not find SBC Illinois' performance to constitute non-compliance with the applicable checklist item, Staff recommended that the Commission condition a positive consultation on SBC Illinois' agreement (i) to devise a specific action plan (to be outlined in SBC Illinois' rebuttal affidavits) that addresses the billing problems associated with performance measure 17, and (ii) to demonstrate that billing timeliness has significantly improved by year end. Staff maintained that billing in a timely and complete manner is a chronic problem for SBC, and the company must identify the steps it will take to correct its shortcomings in this area. That is, once the action plan is outlined, it must then be implemented and, finally, performance for measure 17 must become satisfactory.

### **(b) Staff's Reply Position**

Staff noted that in response to its observation that SBC Illinois was consistently failing PM17, SBC Illinois witness Mr. Ehr responded (i) that the company uses a higher standard than called for in the PM17 business rules; (ii) that even though SBC Illinois is failing on this measure, the performance at 91% is high; and (iii) that adjustments to PM17 have been agreed to in the recently completed six-month collaborative, and are before the Commission for approval, that will provide for more appropriate comparisons of like products to the retail equivalent process. ICC Staff Ex. 42.0 at ¶ 8.

Staff asserts that Mr. Ehr's explanations with respect to PM17 are not acceptable. *Id.* at ¶ 9. First, Mr. Staranczak noted that SBCI claims it uses a higher standard than is required by the PM 17 business rules, and then argues that it is alright to fail because it has voluntarily used a higher than necessary standard. *Id.* Staff countered that if SBCI voluntarily chose to use a higher standard, then they should be judged by this standard -- and they are failing by the standard they themselves have chosen. Second, with respect to the company's contention that 91% is good enough, Staff points out that PM 17 is not a benchmark measure and 91% is not the benchmark. The agreed to standard for this measure is parity, and SBCI is not reaching parity. Finally, Staff observed that there is no guarantee that just because adjustments to PM17 have been recently agreed to, that SBCI will now pass PM17 whereas before these adjustments it consistently failed PM17. The comparisons in the new business rules may be more appropriate, but Mr. Ehr did not indicate what steps SBCI has taken to ensure it will pass PM17 under what it alleges are more suitable comparisons of like retail products. Staff concluded that according to the data available, SBC Illinois has consistently failed PM17 whether its performance is compared to its affiliate or its retail operations. Staff also noted that SBC Illinois failed this performance measure in January 2003, both against its affiliate and against its retail operations. *Id.*

Therefore, Staff concluded that Mr. Ehr's explanations of SBC Illinois' shortcomings with respect to PM 17 are unsatisfactory.

### **(c) Commission Analysis And Conclusion**

SBC's performance measures with respect to billing are generally satisfactory.

However, there is one significant exception, that being PM17 - timeliness. SBC consistently gives its affiliate more timely bills than it gives the CLECs. Moreover, this has been a persistent problem over the last year and SBC has failed to demonstrate much improvement over that time period.

The Staff has recommended that SBC Illinois must identify the steps that it will take to correct its unsatisfactory performance with respect to PM17 - billing timeliness, and then must implement its plan and demonstrate substantially improved performance six months hence. We concur in this recommendation and hereby adopt it.

#### **e) Staff Recommendation for Checklist Item 2 PM Data**

##### **(1) Staff's Initial Position**

For the 67 performance measures applicable to Checklist Item 2, according to the statistical guidelines, the company passed all of the performance measures except for 13 (PM 5, 7.1, 10.1, 10.2, 10.3, 10.4, 11.1, 13, 29, 35, 56, 62, MI 13). In Staff's opinion the three months of performance measurement data provided by the company in support of Checklist Item 2 does not demonstrate that, with respect to the ordering performance measures, SBC Illinois is providing non-discriminatory service to the CLECS. Ms. Weber recommends that we require SBC Illinois to correct the deficiencies associated with the ordering performance measures prior to receiving a positive Section 271 recommendation from this Commission. If we elects to provide a positive recommendation to the FCC, regardless of SBC Illinois' failure to meet key pre-order and order performance measures related to checklist (ii), then Ms. Weber recommends that we require the company to improve its performance for the ordering performance measurements.

##### **(2) Staff's Reply Position**

The Staff has somewhat modified its conclusions based upon comments filed by SBC Illinois on March 3, 2003. According to the statistical guidelines and additional analysis provided in Staff's initial and reply affidavits, the company passed all but 8 performance measures (PM 7.1, 10.1, 10.2, 10.3, 10.4, 11.1, 13, MI 13).

The Staff is of the opinion that the three months of performance measurement data provided by the company in support of checklist (ii) does not demonstrate that, with respect to the ordering performance measures, SBC Illinois is providing non-discriminatory service to the CLECS. SBC Illinois should be required to correct the deficiencies associated with the ordering performance measures prior to receiving a positive Section 271 recommendation from this Commission. If we elect to provide a positive recommendation to the FCC, regardless of SBC Illinois' failure to meet key performance measures related to checklist (ii) then we should (a) require the company to identify the steps it will take to remedy its current unsatisfactory performance with respect to the ordering performance measurements and (b) require the company to

demonstrate substantially improved performance by November 2002 or face additional penalties.

### **(3) Commission Analysis And Conclusion**

The Staff contends that the three months of performance measurement data submitted by the company in support of checklist (ii) does not demonstrate that with respect to the ordering or provisioning performance measures, SBC Illinois is providing non-discriminatory service to the CLECS.

The Staff is correct in this assessment. The data submitted by the company simply do not bear out the company's assertions that the data proves it has met the competitive checklist.

To remedy these defects, the Staff has proposed that SBC Illinois should be required to demonstrate improved performance associated with the ordering performance measures that apply to check list item (ii) specifically with respect to performance measures (PM 7.1, 10.1, 10.2, 10.3, 10.4, 11.1, 13 and MI 13) prior to receiving a positive Section 271 recommendation from this Commission. If the Commission decides to provide a conditional recommendation to the FCC, regardless of SBC Illinois' failure to meet key performance measures related to checklist (ii) then the Commission should (a) require the company to identify steps it will take to remedy its current unsatisfactory performances with respect to the ordering performance measurements and (b) require the company to demonstrate substantially improved performance by November 2003 or face additional penalties. Staff Ex. 29.0, 43.0.

We hereby direct SBC Illinois to correct the deficiencies associated with the ordering performance measures that apply to check list item (ii), prior to which we are compelled to withhold any favorable recommendation of the company's Section 271 application.

## **VII. Checklist Item 3 - Access to Poles, Ducts, Conduits, and Rights of Way**

### **A. Performance Measurement Data Analysis**

Checklist item 3, regarding access to poles, ducts, conduits, and rights of way interconnection and collocation, encompasses the following performance measures: 105, and 106.

PM data relative to access to poles, conduits and right of ways, PMs 105 and 106, indicates that there was insufficient data for all sub-measures to make a determination. Further discussion of Staff's position on access to poles, conduits and right of ways is provided in the Affidavit of Russell Murray, ICC Staff Ex. 34.

It is Staff's determination that SBC Illinois' reported performance relative to checklist item 3 is satisfactory.

## **1. Staff's Initial Position**

The Staff observes that there are two performance measures associated with access to poles, rights-of-way, and conduits. These are PM 105 (Percent request processed within 35 days), and PM 106 (Average days required to process a request). Attachment B to the Initial Affidavit of SBC witness James Ehr provides a detailed breakdown of the performance measurements associated with access to poles, right-of-ways, and conduits.

Based upon its review of this attachment, the Staff of the opinion that SBC's reported data indicates insufficient or no data available for these measures. There is insufficient data to evaluate SBC's performance with respect to access to poles, right-of-ways and conduits. Therefore, Staff cannot conclusively state that SBC has failed to meet Checklist Item 3.

## **2. Staff's Reply Position**

There are two performance measures associated with access to poles, rights-of way, and conduits. These are PM 105 (Percent request processed within 35 days), and PM 106 (Average days required to process a request). SBCI witness James Ehr's conclusion that, although "the volume of CLEC requests was not sufficient to permit statistical analysis, SBC Illinois still met the benchmark on those requests that were submitted"<sup>1</sup> is consistent with the Staff's conclusions. No Intervenor expert submitted any testimony that contradicts this conclusion. Therefore, Staff has no basis upon which to disagree with SBCI's position that the company has met the requirements for the two performance measures associated with access to poles, rights-of-way, and conduits.

## **VIII. Checklist Item 4 - Unbundled Local Loops**

### **A. Performance Measurement Data Analysis**

Checklist item 4, regarding unbundled local loops, encompasses PMs 27 through 69, 114, 114.1, 115, MI 3, CLEC WI 5, and CLEC WI 11. All worksheets are included in Schedule 29.02.

Review of the remedied Checklist Item 4 sub-measures provides the following information:

---

<sup>1</sup> SBC EHR Phase II Rebuttal Affidavit @ Paragraph 40, Page 17.



<p style="text-align: center;"><b>Checklist Item 4</b>  Summary of Performance  Unbundled Local Loops</p>				
	Sept. '02	Oct. '02	Nov. '02	Total
Number of Sub-measures Missed	11	9	7	7
Number of Sub-Measures Passed	116	120	127	122
Total Number of Sub-Measures	127	129	134	129
Percentage of Sub-Measures Passed	91.3%	93.0%	94.8%	94.6%

**a) Unbundled Stand-Alone DSL Loops**

**(1) Problems with Key PM C WI-6 — Percent Form A Received with the Interval Ordered by the Commission**

Unbundled Local Loops – Stand-Alone DSL Loops: The PM data submitted by the Company indicates that the Company meets benchmarks for installation timeliness, installation quality, and post installation maintenance and repair when installing stand-alone DSL loops. The Company is not, however, meeting FMOD process benchmarks including those measured by submeasure C WI 6 – 02.

**(2) Staff's Initial Position**

**(a) Installation Timeliness**

Dr. Zolnierrek explained that stand-alone DSL loops are divided into two general types: those that require conditioning and those that do not. ICC Staff Ex. 32.0 at ¶ 46. SBC Illinois does not provide conditioned loops to its affiliate while it does provide loops without conditioning to its affiliate. Thus, performance in provisioning stand-alone DSL loops with non conditioning can be compared not only to the established benchmarks, but to service being provided to the Company's affiliate. Dr. Zolnierrek testified that PMs 55.1-04 (Average Installation Interval – DSL – No Linesharing – Without Conditioning) and 56-12.2 (Percent Installations Completed Within the Customer Requested Due Date – DSL – No Linesharing – Without Conditioning) each indicate that the Company is providing service to CLECs that is not at parity with the service it provides to its affiliate. *Id.*

Staff pointed out that the differences between the service provided to the Company's affiliate and to CLECs are not trivial. ICC Staff Ex. 32.0 at ¶ 47. Staff observed, for example, that in September, October and November of 2002 the average installation intervals for stand-alone DSL loops without conditioning provided to CLECs

were 4.90, 5.03, and 4.87 days respectively, while the average installation intervals for stand-alone DSL loops without conditioning provided to the Company's affiliate were 0.67, 3.00, and 1.00 days respectively. *Id.* Similarly, although the Company completed 100% of installations by the customer requested due date for stand-alone DSL loops without conditioning for its affiliate in both September and November of 2002, it provided installations by the customer requested due date for CLECs 98.98%, 98.98%, and 98.27% of the time in September, October, and November of 2002. *Id.* at ¶ 48. Staff points out that while the Company provisioned CLEC orders by the requested due dates a high percentage of the time, the high percentage lags behind the Company's performance in meeting its affiliates requested due dates.

Staff notes that the disparity between the Company's installation provisioning to CLECs and to its own affiliate, as measured by average installation intervals and installations completed by the customer requested due dates, does not occur with respect to stand-alone DSL loops with conditioning. ICC Staff Ex. 32.0 at ¶ 49. Staff explained that no disparity occurs because the Company data indicates that it does not provision stand-alone DSL loops with conditioning for its affiliate. *Id.*

Dr. Zolnierrek explained that PMs 58-04 (Percent Ameritech-Caused Missed Due Dates – DSL – No Linesharing) and 60-02.1 (Percent Missed Due Dates Due to Lack of Facilities – DSL – No Linesharing) do not distinguish between stand-alone DSL loops with conditioning and stand-alone DSL loops without conditioning, presumably including both. ICC Staff Ex. 32.0 at ¶ 50. This aggregation impairs the ability of the data to identify disparities in installation provisioning to CLECs and to the Company's affiliate. However, Dr. Zolnierrek observed that with respect to PMs 58-04 and 60-02.1, the disparity between the Company's installation provisioning to CLECs and to its own affiliate continues to appear. *Id.* Whereas the Company did not cause any due dates in September, October, or November of 2002 to be missed when installing stand-alone DSL for its affiliate, it caused missed due dates 0.81%, 1.00%, and 1.93% of the time when installing stand-alone DSL loops for CLECs. *Id.* at ¶ 51. In response to Mr. Ehr's testimony that "performance results for PM 63-02 (Percent Ameritech-Caused Missed Due Dates Greater Than 30 Days – DSL – No Linesharing) indicate that none of these missed due dates resulted in a delay of installation beyond 30 days . . .", Staff pointed out that the Company nevertheless caused missed due dates and delays in installation when provisioning for CLECs that did not occur with when provisioning for its affiliate. *Id.*

Staff also observed that the Company missed no due dates due to a lack of facilities in September, November, or December when providing stand-alone DSL loops to its affiliate, but missed 0.80%, 0.89%, and 0.76% of due dates in September, November, and December, respectively, when providing stand-alone DSL loops to CLECs. ICC Staff Ex. 32.0 at ¶ 52. Again, while the Company provisioned CLEC orders on time a high percentage of the time (in fact missing no CLEC due dates by more than 30 days due to a lack of facilities), the high percentage lags behind the Company's performance in meeting its affiliates requested due dates. *Id.*

Dr. Zolnierrek pointed out that the data presented by the Company in Ehr Attachment B indicates a clear disparity between the Company's installation provisioning to CLECs and to its own affiliate. ICC Staff Ex. 32.0 at ¶ 53. Nevertheless

the business rules that establish installation performance standards for each of these stand-alone DSL PMs require the company to meet benchmarked performance when provisioning to CLECs rather than to provide service at parity with service provided to its affiliate. The Company has, with respect to its installation provisioning of stand-alone DSL to CLECs, met these benchmarks. *Id.*

### **(b) Installation Quality**

Although Staff concurs with Mr. Ehr's observation that "SBC Illinois has met the 6% benchmark for PM 59-04 (Percent Trouble Reports Within 30 Days of Installation – DSL – No Linesharing) in each of the three months ending with November 2002", Staff points out that there is nonetheless a disparity between service provided to CLECs and that provided to the Company's affiliate. ICC Staff Ex. 32.0 at ¶ 54. For example, in December 2001, January 2002 and February 2002 the CLEC percent trouble reports equaled 4.71%, 3.16% and 3.37%, respectively while the Company's affiliate percent trouble reports equaled 2.89%, 1.62%, and 0.63%, respectively. *Id.* Dr. Zolnierек did observe, however, that in recent months the Company appears to have corrected this problem and the disparity has reversed. *Id.*

### **(c) Maintenance and Repair Service**

Dr. Zolnierек testified that the PMs measuring maintenance and repair performance for stand-alone DSL loops are PM 65-04 (Trouble Report Rate – DSL – No Linesharing), PM 65.1-04 (Trouble Report Rate Net of Installation and Repeat Reports – DSL – No Linesharing), PM 67-04 (Mean Time to Restore – Dispatch – DSL – No Linesharing), PM 67-19 (Mean Time to Restore – No Dispatch – DSL – No Linesharing), and PM 69-04 (Percent Repeat Reports – DSL – No Linesharing). ICC Staff Ex. 32.0 at ¶ 55. For all of these measures, the Company meets the benchmarks included in its business rules for September through November of 2002. *Id.*

With respect to PMs 65-04 (Trouble Report Rate – DSL – No Linesharing), 65.1-04 (Trouble Report Rate Net of Installation and Repeat Reports – DSL – No Linesharing), PM 67-19 (Mean Time to Restore – No Dispatch – DSL – No Linesharing) and PM 69-04 (Percent Repeat Reports – DSL – No Linesharing) the data indicates that the Company is providing maintenance and repair to its affiliate as good or better than it does to CLECs. *Id.* at ¶ 56. However, PM 67-04 (Mean Time to Restore – Dispatch – DSL – No Linesharing) indicates that when dispatch is required CLECs stand-alone lines are out of service on average longer than the Company affiliate is out of service. *Id.* Staff observed that in such cases CLECs were out of service on average for 7.24, 5.69, and 5.72 hours in September, October and November of 2002, while the Company's affiliate was out of service on average for 4.16, 4.24, and 4.00 hours, respectively. *Id.*

#### **(d) FMOD Service**

Dr. Zolnierrek testified that with respect to stand-alone DSL loops, the PM data indicates that the Company's affiliate has not received any notifications indicating that a no facilities available situation exists (FMOD Form A) whereas CLECs have. ICC Staff Ex. 32.0 at ¶ 57. Dr. Zolnierrek explained that this distinction is important because the Company is not sending Form A notifications to CLECs in a timely manner. *Id.* PM C WI 6 – 02 (Percent Form A Within Interval – DSL Loops without Linesharing) indicates that the Company failed to send 95% of Form A notifications within the 24 business hour benchmark. The Company sent only 93.48% and 92.77% of Form As on time in October and November of 2002. Furthermore the Company's performance in returning Form As steadily declined in the second half of 2002. *Id.* Dr. Zolnierrek explained that when the Company fails to provide timely Form A notifications CLECs may not be able to notify their customers of related delays in a timely manner. *Id.* at ¶ 58. Thus, the Company's failure to send timely notifications may negatively affect CLEC customer satisfaction and impair CLECs' ability to compete in Illinois.

Staff observed that when following up with information on the type of modification necessary the Company was much better in providing notification when "simple" modifications were required (FMOD Form D). ICC Staff Ex. 32.0 at ¶ 59. PM – C WI 7-03.2 (Percent Form D Within 72 Hours – DSL Loops without Linesharing) indicates the Company has provided Form D notifications with 72 hours for the period beginning in December of 2001 and ending in November of 2002.

Dr. Zolnierrek testified that the Company has been slightly less successful in sending notifications indicating that "complex", "IDLC/RSU" based, or "New Build" modifications are required (FMOD Forms B, C and E, respectively). ICC Staff Ex. 32.0 at ¶ 60. PM – C WI 7-01.2 (Percent Form B Within 72 Hours – DSL Loops without Linesharing) indicates that the Company returned Form B notifications within 72 hours at least 95% of the time in September and November of 2002, but only returned Form B notifications within 72 hours 86.67% of the time in October of 2002. *Id.* However, PM – C WI 8-02 (Percent Form B Return FOC with New Due Date Within 24 Hours – DSL Loops without Linesharing) indicates that when a CLEC determines to continue with a complex modification the Company returns Firm Order Confirmations (FOCs) with new due dates on time 100% of the time. PM C WI 7-02.2 (Percent Form C Within 72 Hours – DSL Loops without Linesharing) indicates the Company sent no FMOD Form Cs in the period beginning in December 2001 and ending in November 2002. The few Form Es sent by the Company were as indicated by PM C WI 7-04.2 (Percent Form C Within 72 Hours – DSL Loops without Linesharing) sent on time. *Id.*

Dr. Zolnierrek explained that the PMs discussed above indicate that after initial notification that a no facilities available situation exists the Company generally follows up with detail in a timely manner. *Id.* at ¶ 61. However, Staff points out that there is generally insufficient data to indicate whether the Company is meeting due dates when the FMOD process is invoked. PM C WI 11-01.2 (Percent FMOD Due Dates Met Following Form B – DSL Loops without Linesharing) indicates the Company had problems provisioning only one order in the period beginning in September 2002 and ending in November 2002. *Id.* While this one observation caused the Company to miss

its benchmark in October 2002, Dr. Zolnierек testified that a single miss is insufficient evidence to conclude that the FMOD provisioning process for stand-alone DSL loops flawed. *Id.*

### **(e) Staff Recommendation**

Dr. Zolnierек testified that the data presented in Ehr Attachment B indicates a clear disparity between the Company's stand-alone DSL installation provisioning to CLECs and to its own affiliate. ICC Staff Ex. 32.0 at ¶ 62. Staff points out that such disparity in provisioning may impair CLECs ability to compete with the Company affiliate in the provision of service requiring the use of the Company's stand-alone DSL UNEs. *Id.* However, Staff also acknowledges that the Company is meeting the benchmarks established in its business rules for provisioning of stand-alone DSL to CLECs and is in many cases surpassing the established benchmarks. *Id.*

Staff explained that it has identified a potential deficiency in the Company's provisioning of stand-alone DSL service so that the Company can address this problem if it desires and so that the Commission has the opportunity to require the Company to take corrective action should the Commission desire to do so. *Id.* at ¶ 63. However, because the Company is meeting its benchmarks for provision of stand-alone service and the Company's performance with respect to such provisioning is generally very good (relative to the established benchmarks), Staff recommended that, based on the PM data submitted by the Company, the Commission should find that the Company is providing its stand-alone DSL service, with one exception, in accordance with the requirements of Section 271(c)(2)(B)(iv) of the 1996 Act. *Id.* The exception to Staff's general recommendation concerns the FMOD process and the Company's failure to send FMOD Form A notifications on time. As a prerequisite to a positive consultation with the FCC regarding whether the Company is providing its stand-alone DSL loops in accordance with the requirements of Section 271(c)(2)(B)(iv), Staff recommends that the Commission require the Company to send FMOD Form A notifications on time. *Id.* Staff further recommended that the Company, in its rebuttal affidavits, explain why this problem is occurring and demonstrate that proper steps have been taken to ensure that the problem is corrected on a going forward basis. *Id.*

## **(3) Staff's Reply Position**

### **(a) FMOD Form A Responses**

In his rebuttal affidavit, SBC Illinois witness Mr. Ehr does not dispute that the Performance Measurement data that he included in Attachments A and B to his opening affidavit indicates that the Company is failing to provide FMOD Form A notifications in accordance with the standards established in the Company's business rules. See ICC Staff Ex. 44.0 at ¶ 5. Rather he states that "[u]pon investigation, it was determined that the below-benchmark performance in these two months was due to inadvertent inclusion of certain loops that should have been excluded." *Id.* Dr. Zolnierек testified that Mr. Ehr's explanation indicates that the performance measurement data submitted

by the Company is unreliable with respect to this measure and is deficient for the following reasons. *Id.* at ¶ 5. First, Staff pointed out that Mr. Ehr fails to identify what loops were incorrectly included in PM CLEC WI 6 – 02 (Percent Form A Within Interval – DSL Loops without Linesharing) and why these loops should, according to the Company's business rules, be properly excluded. *Id.* Second, Mr. Ehr fails to provide restated data that would indicate that the Company's adjustments cause PM CLEC WI 6-02 to meet rather than miss the 24-business hour benchmark for this measure. *Id.* Finally, while Mr. Ehr indicates that this correction was instituted effective with the December 2002 results, he fails to provide December 2002 and January 2003 data to support his assertion that the recalculated PM CLEC WI 6 – 02 now indicates the Company is meeting the 24-hour benchmark for this measure. *Id.*

Staff noted that while Mr. Ehr did not provided December 2002 and January 2003 results in his rebuttal affidavit, those results were available from CLEC Online. ICC Staff Ex. 44.0 at ¶ 6. Schedule B to Mr. Ehr's initial affidavit indicated that from December 2001 through November 2002 the PM C WI 6 – 02 included on average over 167 orders per month. The information on CLEC Online indicates that there was only 1 stand-alone DSL order included in PM C WI 6-02 in December 2002 and 2 stand-alone DSL orders included in PM C WI 6-02 in January 2003. Thus, Staff observed that the Company's revised methodology excludes virtually all stand-alone DSL orders that would have been included under the previous methodology. *Id.* In fact, the Company had insufficient data in December 2002 and January 2003 to compute z-scores. Nevertheless, despite the fact that only three orders were included in the December 2002 and January 2003 figures the Company missed the benchmark for 1 of the 3 orders. Therefore, Staff explained that the Company has submitted no evidence that it is sending FMOD Form A letters on time and in fact the little evidence it has provided suggests it is not. *Id.*

#### **(b) Staff Recommendation**

Staff continues to recommend that, as a prerequisite to a positive consultation with the FCC regarding whether the Company is provisioning it's stand-alone DSL loops in accordance with the requirements of Section 271(c)(2)(B)(iv), that the Company take corrective action to ensure that FMOD Form A notifications related to stand-alone DSL orders are sent in a timely manner. ICC Staff Ex. 44.0 at ¶ 7.

#### **(4) Commission Analysis And Conclusion**

With respect to unbundled local loops – stand-alone DSL loops, the PM data submitted by the company indicates that it meets benchmarks for installation timeliness, installation quality, and post installation maintenance and repair when installing stand-alone DSL loops.

SBC Illinois is not, however, meeting FMOD process benchmarks including those measured by submeasure C WI 6 – 02.

The Staff has recommended that we direct SBC Illinois to remedy this defect by

requiring the company to send FMOD Form A notifications on time. Moreover, avers the Staff, the company should explain why this problem is occurring and demonstrate that proper steps have been taken to ensure that the problem is corrected on a going forward basis. The Staff recommends that these measures be implemented as a prerequisite to a positive consultation with the FCC regarding whether the company is provisioning its stand-alone DSL loops in accordance with the requirements of Section 271(c)(2)(B)(iv).

We concur, and direct the company to undertake these measures.

## **b) Unbundled DSL Loops With Linesharing**

Unbundled Local Loops – DSL Loops With Linesharing: The PM data submitted by the Company indicates that the Company meets parity criteria for installation timeliness when installing DSL loops with line sharing. Installation quality and repair and maintenance of installed DSL loops with linesharing, however, is not provided at parity as indicated by the fact that the Company is not meeting parity criteria with respect to sub-measures 59-03, 65-03, 65.1-03, 67-03, 67-18, and 66-03.

### **(1) Staff's Initial Position**

#### **(a) Installation Timeliness**

Dr. Zolnierrek explained that like stand-alone DSL loops, DSL loops with linesharing are divided into two general types: those that require conditioning and those that do not. ICC Staff Ex. 32.0 at ¶ 64. Again, like stand-alone DSL loops, SBC Illinois does not provide conditioned loops to its affiliate while it does provide loops without conditioning to its affiliate. *Id.* Unlike stand-alone DSL loops, however, the Company does not for the most part provide disparate DSL loop with linesharing service to CLECs and its affiliate. *Id.* In fact, Staff observed that PMs 55.1-02 (Average Installation Interval – DSL –Linesharing – Without Conditioning) and 56-13 (Percent Installations Completed Within the Customer Requested Due Date – DSL –Linesharing – Without Conditioning) indicate that the Company is providing DSL loops with linesharing service on time to CLECs as often or more often than it provides them on time to its affiliate. *Id.*

Staff noted that the business rules for DSL loops with linesharing require the Company to provide DSL loops to CLECs at parity with provisioning to the Company's affiliate. *Id.* at ¶ 65. Therefore, the fact that the Company's affiliate does not purchase DSL loops with linesharing with conditioning means that there is no standard the company must meet with respect to PMs 55.1-01 (Average Installation Interval – DSL – Linesharing – With Conditioning). *Id.* Staff observed that for the period beginning in December 2001 and ending in November of 2002 it took the company on average 10.30 days to install DSL with linesharing with conditioning for CLECs, and on average less than 10 days in the period beginning September 2002 and ending November 2002. *Id.* Dr. Zolnierrek explained that in the absence of a company equivalent, a reasonable benchmark would be the benchmark established for installation of DSL without

linesharing with conditioning, which is 10 days. *Id.* Dr. Zolnierrek testified that the Company's performance with respect to PM 55.1-01, which measures performance with respect to DSL with linesharing with conditioning, does not require corrective action when measured against the benchmarks established for DSL without linesharing with conditioning. *Id.*

Staff noted that PMs 58-03 (Percent Ameritech-Caused Missed Due Dates – DSL –Linesharing) and 60-01.1 (Percent Missed Due Dates Due to Lack of Facilities – DSL –Linesharing) indicate that the company is not missing due dates because of Company causes or lack of facilities more frequently for CLECs than it does for itself or its affiliate. ICC Staff Ex. 32.0 at ¶ 66. PM 63-01 (Percent Ameritech-Caused Missed Due Dates Greater Than 30 Days – DSL –Linesharing) and PM 60-01.2 (Percent AIT Missed Due Dates Due to Lack of Facilities – DSL – Linesharing) similarly show that the company has not caused a missed due date or missed a due date for lack of facilities by more than 30 days for CLECs or for its affiliate. *Id.* Staff also noted that PM 62-02 (Average Delay Days for AIT Caused Missed Due Dates – DSL – Linesharing) indicates that delay days caused by Company caused missed due dates for CLECs are approximately equal to delay days caused by Company caused missed due date for the Company's affiliate. *Id.*

Staff concluded that the PMs measuring installation timing for DSL with linesharing indicate that the Company is providing installation of DSL service to CLECs at parity with the installation of DSL service the Company provides to itself and its affiliate. *Id.* at ¶ 67.

### **(b) Installation Quality**

Staff stated that while the Company is providing installation of DSL with linesharing on time, the quality of provisioning is very poor. ICC Staff Ex. 32.0 at ¶ 68. Staff observed that PM 59-03 (Percent Trouble Reports Within 30 Days of Installation – DSL –Linesharing) reveals that CLECs have had troubles shortly after installation of their DSL lines with linesharing much more frequently than has the Company affiliate. *Id.* For example, in September, October, and November of 2002 the CLEC percent trouble reports equaled 2.97%, 5.41%, and 3.51%, respectively, while the Company's affiliate percent trouble reports equaled 1.55%, 1.49%, and 1.29%, respectively. Staff further observed that, according to Ehr Attachment B, PM 59-03, the Company's service in this respect has declined in recent months indicating a problem that is increasing rather than diminishing. *Id.*

### **(c) Maintenance and Repair**

Dr. Zolnierrek explained that the PMs measuring maintenance and repair performance for DSL loops with linesharing are PM 65-03 (Trouble Report Rate – DSL –Linesharing), PM 65.1-03 (Trouble Report Rate Net of Installation and Repeat Reports – DSL –Linesharing), PM 67-03 (Mean Time to Restore – Dispatch – DSL – Linesharing), PM 67-18 (Mean Time to Restore – No Dispatch – DSL –Linesharing), PM



69-03 (Percent Repeat Reports – DSL –Linesharing), and PM 66-03 (Percent Missed Repair Commitments – DSL – Linesharing). ICC Staff Ex. 32.0 at ¶ 69. Staff points out that, with the exception of PM 69-03, all of the maintenance and repair performance measures indicate that the Company is not providing maintenance and repair service at parity. *Id.*

Although SBC Illinois witness Mr. Ehr testified that the CLEC trouble report rate exceeds the SBC Illinois' affiliate trouble report rate by 0.05, 0.37, and 0.21 reports per 100 loops in September, October and November of 2002, respectively, Staff explained that these differences are not insignificant. ICC Staff Ex. 32.0 at ¶ 70. Staff pointed out that according to the PM data, the trouble reports per hundred loops for CLECs were approximately double the trouble reports for the Company's affiliate in October and November of 2002, and the Company's service as measured by PM 65-03 has markedly deteriorated in the second half of 2002. *Id.* Staff also found Mr. Ehr's attempt to characterize the differences for PM 65.1-03 (Trouble Report Rate Net of Installation and Repeat Reports – DSL –Linesharing) as "minor" to lack merit. *Id.* at ¶ 71. Staff observed that Mr. Ehr failed to note that the trouble report rates for CLECs were approximately double the trouble report rates for the Company's affiliate in September, October and November of 2002, and that the Company's service as measured by PM 65.1-03 has markedly deteriorated in the second half of 2002. *Id.*

Staff pointed out that PM 67-18 (Mean Time to Restore – No Dispatch – DSL – Linesharing) further indicates a disparity between service provided to the Company's affiliate and service provided to CLECs. ICC Staff Ex. 32.0 at ¶ 72. Mean restoration times in September, October, and November of 2002 were 7.76, 5.27, and 3.88 hours for service provided to CLECs, while they were 3.65, 2.61, and 3.12 hours for service provided to the Company's affiliate. *Id.* Dr. Zolnierrek stated that although Mr. Ehr notes this problem, he indicates only that "SBC Illinois' Network organization is actively engaged in efforts to provide additional monitoring of linesharing trouble reports so that the durations are reduced; improvement in results is expected in the very near future." *Id.*

Dr. Zolnierrek observed that the data for PM 69-03 (Percent Repeat Reports – DSL – Linesharing) indicates that the Company is providing maintenance and repair to address repeat reports that is at near parity with that provided to affiliates. ICC Staff Ex. 32.0 at ¶ 73. However, he pointed out that for September 2002 the company reports a repeat trouble report rate for CLECs of 5.33% compared to a repeat trouble report rate for its affiliate of only 3.18%, and for October 2002 the Company reports a repeat trouble report rate for CLECs of 7.09% compared to a repeat trouble report rate for its affiliate of only 5.11%. *Id.* Dr. Zolnierrek testified that the size of the disparity in trouble report rates indicates that the Company is not providing service at parity. *Id.*

With respect to PM 67-03 (Mean Time to Restore – Dispatch – DSL – Linesharing), Staff stated that the data indicates that the Company took longer to restore service to CLECs than it did to restore service to its affiliate. ICC Staff Ex. 32.0 at ¶ 74. In September, October, and November of 2002, the mean times to restore CLEC service were 12.48, 8.38, and 10.87 hours while the mean times to restore the Company affiliate's service were 7.69, 6.62, and 9.07 hours. *Id.*

With respect to PM 66-03 (Percent Missed Repair Commitments – DSL – Linesharing), Staff notes the data again indicates that the company is not providing maintenance and repairs to CLECs of the same quality that it provides to its affiliate. ICC Staff Ex. 32.0 at ¶ 75. Staff observes that Mr. Ehr dismisses these results arguing that “...just 9 repair commitments were missed in September and 10 in October for trouble reports generated by CLECs’ line shared DSL loops.” *Id.* In response, Staff pointed out that Mr. Ehr failed to recognize that there were only 75 and 127 trouble reports generating these repair commitments in September and October of 2002. *Id.* Thus, the company missed 12.00% and 7.87% of its repair commitments in these months. In comparison the company only missed 4.62% and 2.19% of repair commitments for its affiliate in these months. *Id.*

Staff concluded that the PMs measuring maintenance and repair service for DSL with linesharing indicate that the Company is not providing service to CLECs at parity with the service provided to its affiliate. ICC Staff Ex. 32.0 at ¶ 76.

#### **(d) FMOD Service**

Staff pointed out that no CLECs requesting DSL loops with linesharing were sent any notifications indicating that a no facilities available situation exists (FMOD Form A). ICC Staff Ex. 32.0 at ¶ 77. Thus, Staff states that there is no evidence to indicate whether the FMOD process is or is not working with respect to DSL loops with linesharing.

#### **(e) Staff’s Recommendation**

Staff submits that the PMs measuring provisioning of DSL with linesharing indicate that the Company generally installs DSL with linesharing for CLECs in a timeframe similar to the time frame in which the Company install DSL with linesharing for its affiliate. ICC Staff Ex. 32.0 at ¶ 78. However, Staff also maintains that installation quality and repair and maintenance of installed DSL loops with linesharing is not provided at parity as indicated by the fact that the Company is not meeting parity criteria with respect to submeasures 59-03, 65-03, 65.1-03, 67-03, 67-18, and 66-03. *Id.* Thus, Staff finds that the Company appears to provide better maintenance and repair service to its affiliate than it does to CLECs. *Id.*

Although Mr. Ehr indicates that the Company is working to correct this situation, Staff points out that the data presented by the Company indicates there is a significant disparity in the quality of, and repair and maintenance of, DSL loops with linesharing provided to CLECs relative the quality and repair and maintenance of DSL loops with linesharing provided to the Company’s affiliate. ICC Staff Ex. 32.0 at ¶ 79. Thus, as a prerequisite to a positive consultation with the FCC regarding whether the Company is provisioning its DSL loops with linesharing in accordance with the requirements of Section 271(c)(2)(B)(iv), Staff recommended that the Commission require the Company to provide DSL with linesharing loop quality and maintenance and repair service to CLECs that is at least as good as the loop quality and maintenance and repair service

the Company provides to its affiliate. *Id.* Staff further recommended that the Company explain in its rebuttal affidavits why these problems are occurring and demonstrate that proper steps have been taken to ensure that these problems are corrected on a going forward basis. *Id.*

## **(2) Staff's Reply Position**

### **(a) Analysis of Company Response Regarding Installation Quality and Repair and Maintenance**

SBC Illinois witness Mr. Ehr does not dispute that submeasures 59-03, 65-03, 65.1-03, 67-03, 67-18, and 66-03 did not meet parity standards. See ICC Staff Ex. 44.0 at ¶ 9. Rather, Staff observes, Mr. Ehr provides incomplete explanations for why the Company is experiencing performance problems with respect to these measures and does not explain how the steps the Company has taken to correct the problems will result in improved performance. *Id.*

Staff pointed out that Exception 39 in Section II of E & Y's Exceptions to Compliance indicates that:

The Company improperly calculated the wholesale numerator during March, April, and May 2002 for the Lineshare submeasure. The Company only included trouble reports for the voice portion of the line and improperly excluded trouble reports related to the data portion of the line.

ICC Staff Ex. 44.0 at ¶ 10. The Company indicates that it made appropriate restatements shortly before submitting initial affidavits. *Id.* Staff notes that this amounts to a contention that the Company only recently became aware of its DSL with linesharing provisioning problems because it was improperly computing these PMs. *Id.* Nevertheless, Staff notes that Mr. Ehr explains that the Company has taken a number of internal steps "to address maintenance and repair performance on CLEC DSL Lineshare loops" and outlines these steps. *Id.* Although it is laudable that the Company is taking steps to address its maintenance and repair problems, Staff finds Mr. Ehr's response to the concerns raised by Staff to be, in many respects, deficient. *Id.*

Staff observes, for example, that Mr. Ehr does not address the root cause of the Company's failure to meet parity standards with respect to submeasures 65-03 and 65.1-03. ICC Staff Ex. 44.0 at ¶ 11. Staff explained that absent any identifiable cause for these failures, it is unclear how the steps the Company has taken will remedy the problems indicated by these measures. *Id.* Similarly, the Company provided no explanation for the root cause of the failures for PMs 67-03 and 67-18. *Id.* at ¶ 12. Staff noted that with respect to these PMs Mr. Ehr simply asserted that "SBC Illinois' Network organization is taking steps to address the performance issues, and the reported results are expected to be in parity or meet the applicable benchmark standard shortly." *Id.*

Staff notes that with respect to submeasure 59-03 (Percent Trouble Reports Within 30 Days of Installation – DSL – Linesharing) Mr. Ehr explained that "...one

reason for performance shortfalls for [sic] PM 59-03 has been traced to the inability to identify minor facilities failures (such as shorts and grounds) at time of provisioning without dispatch of a technician.” ICC Staff Ex. 44.0 at ¶ 13. Staff finds Mr. Ehr’s explanation to be deficient given his failure to indicate whether this is the only or even the primary reason for the Company’s failure. *Id.* Staff pointed out that Mr. Ehr also failed to provide restated data that would indicate that if the “shorts and grounds” problems were corrected that PM 59-03 would have met parity standards for this measure. *Id.* Finally, Staff explained that Mr. Ehr provided no explanation of how the steps the Company has taken to address maintenance and repair performance will ensure that this problem is corrected and will not recur on a going forward basis. *Id.*

Staff notes that Mr. Ehr also acknowledges that the Company failed to meet parity standards in September and October for PM 66-03. ICC Staff Ex. 44.0 at ¶ 14. Staff further notes that Mr. Ehr failed to identify any discernable cause, arguing instead that the absolute number of failures with respect to CLECs was not significantly greater than the absolute number of failures with respect to the Company’s affiliate. *Id.* Staff asserts that Mr. Ehr’s argument contradicts his approach to analyzing other performance measurement data and does not counter the fact that the Company did not meet the Commission-approved standards established for this measure. .

Staff explained that in Dr. Zolnierек’s initial affidavit he identified a large disparity between the Company’s provision of service to CLECs and to its affiliate as measured by PM 67-04 (Mean Time to Restore – Dispatch – DSL – No Linesharing). ICC Staff Ex. 44. at ¶ 15. Because PM 67-04 is a benchmark measure and not a parity measure, Staff did not recommend any remedial action with respect to this measure. Nevertheless, Mr. Ehr chooses to address the Company’s disparate service provision by stating “...the Commission-approved standard is a benchmark, not parity.” *Id.* Thus, Staff observes that with respect to PM 66-03 Mr. Ehr argues that the Commission-approved standard is irrelevant because the Company was in absolute terms providing very little disparate service while arguing that with respect to PM 67-04 the Company’s high level of disparate service provision is irrelevant because the Company was meeting the Commission-approved standard. *Id.*

Thus, Staff finds Mr. Ehr’s explanation for the Company’s failure of PM 66-03 is deficient. ICC Staff Ex. 44.0 at ¶ 16. First, Mr. Ehr. does not identify any cause for the failure. Second, Mr. Ehr provides no explanation of how the steps the Company has taken to address maintenance and repair performance will ensure that this problem is corrected on a going forward basis.

#### **(b) Staff’s Recommendation**

Staff continued to recommend that the Company take corrective action to ensure that it is providing loop quality and maintenance and repair of DSL loops with linesharing at parity as a prerequisite to a finding that the Company is provisioning it’s DSL loops with linesharing in accordance with the requirements of Section 271(c)(2)(B)(iv). ICC Staff Ex. 44.0 at ¶ 17.

### **(3) Commission Analysis And Conclusion**

With respect to unbundled local loops – DSL loops with linesharing, the PM data submitted by the company indicates that the Company meets parity criteria for installation timeliness when installing DSL loops with linesharing.

Installation quality and repair and maintenance of installed DSL loops with linesharing, however, is not provided at parity as indicated by the fact that the company is not meeting parity criteria with respect to submeasures 59-03, 65-03, 65.1-03, 67-03, 67-18, and 66-03.

The Staff recommends that, as a prerequisite to a positive consultation with the FCC regarding whether the company is provisioning its DSL loops with linesharing in accordance with the requirements of Section 271(c)(2)(B)(iv), we should require the company to provide DSL with linesharing loop quality and maintenance and repair service to CLECs that is at least as good as the loop quality and maintenance and repair service the Company provides to its affiliate. Further Staff recommends that the company explain why these problems are occurring and demonstrate that proper steps have been taken to ensure that these problems are corrected on a going forward basis.

We concur, and direct the company to undertake these measures.

#### **c) Unbundled Voice Grade Loops**

##### **(1) Problems with Key PM 55 — Average Installation Interval for N, T and C Orders**

64. Unbundled Local Loops – Unbundled Voice Grade Loops: The PM data submitted by the Company indicates that the Company is not always meeting parity criteria for installation timeliness when installing voice grade loops. For the three months ending in November of 2002, the Company failed to meet parity criteria for PMs 55-01.1, 55-01.2, and 55-01.3 three out of the eight times parity criteria were evaluated. As reflected in PMs 56-01.1 and 56-01.2 the Company missed parity criteria for meeting non-standard customer requested due dates one out of the six times parity criteria were evaluated. In September of 2002, missed due dates caused a delay in provisioning of CLEC service, measured by sub-measure 62-03 that was much longer than missed due date caused delays for the Company's retail customers. Sub-measures 58-05 and 60-03.1, however, indicate that the Company is meeting parity standards with respect to Company caused missed due dates and due dates missed due to lack of facilities. With respect to loops with LNP the Company generally met benchmark installation intervals. Installation quality and repair and maintenance of installed voice grade loops is generally provided at parity. The Company is, however, as sub-measure C WI 11 – 01.4 indicates, failing parity criteria for meeting due dates for FMOD installations.

## **(2) Staff's Initial Position**

### **(a) Installation Timeliness**

Staff observed that PMs 55-01.1 (Average Installation Interval – 2-Wire Analog Loops – 1-10), 55-01.2 (Average Installation Interval – 2-Wire Analog Loops – 11-20) and 55-01.3 (Average Installation Interval – 2-Wire Analog Loops – 20+) indicate that the Company's provisioning process for 2-Wire Analog Loops is deficient. ICC Staff Ex. 32.0 at ¶ 80. These problems were not addressed in the initial affidavit of SBC Illinois witness Mr. Ehr. Staff noted, for example, that Mr. Ehr does not address PM 55-01.3, a measure where the Company failed parity standards in one of two months for which the Company provided performance measurement data. *Id.* Although Mr. Ehr provides three-month average installation intervals for PM 55-01.1 which indicates that the installation intervals for CLEC orders of 1-10 loops were shorter than for SBC retail customers, he fails to provide a three-month average installation interval for PM 55-01.2. *Id.* Ehr Attachment A also reveals that the three-month average installation interval for CLEC orders were longer than for SBC retail customers with orders of 11-20 loops. *Id.*

Staff noted that there were a cumulative total of 8 monthly parity comparisons for the PMs measuring average installation intervals: PMs 55-01.1, 55-01.2, and 55-01.3. ICC Staff Ex. 32.0 at ¶ 81. The Company failed to provide installation at parity for three of the eight monthly comparisons, and in two cases these failures were very large. *Id.* In September 2002 the average installation interval for CLECs with orders of 11-20 loops was 18.77 days compared to just 7.49 days for the Company's retail customers. Similarly, in November 2002 the average installation interval for CLECs with orders of 20+ loops was 10 days compared to just 5.79 days for the Company's retail customers. Staff explained that in two cases, for PM 55-01.1 and PM 55-01.3, the failures were in November, indicating that the problem is more severe in recent months. *Id.*

Dr. Zolnieriek testified that because the parity standard reflected in the data is very lax, the Company's failure to provide 2-wire analog loop installations at parity potentially signals very poor provisioning of 2-wire loops. ICC Staff Ex. 32.0 at ¶ 82. Whereas the FCC recently reported that "average residential installation intervals for individual companies ranged from a low of 0.6 business days to a high of 3.2 business days in 2001", the Company's average installation interval for 2-wire analog loops provided to CLECs in the period between September 2002 and November 2002 ranges from a low of 4.68 days to a high of 18.77 days -- a range far outside the company averages reported by the FCC. *Id.* Staff also notes that the benchmark measures referenced in the Company's business rules are 3 days for orders of 1-10 loops, 7 days for orders of 11-20 loops, and 10 days for orders of 20+ loops. *Id.* These are the benchmarks by which service is measured in Michigan, Indiana, Wisconsin, and Ohio. *Id.* For orders of 1-10 loops and orders of 11-20 loops, the Company misses these benchmarks in all months between September 2002 and November 2002. *Id.* For orders of 20+ loops the Company matches the benchmark measure exactly in October and November of 2002. Staff explained that the importance of these comparisons is that they suggest that the Company's parity provisioning standard is lax and that, consequently, the Company must perform very badly in order to fail to meet the lax

standard. *Id.* Accordingly, Staff points out that the PM data indicates that the Company's level of performance fell below the lenient floor in September and November of 2002. *Id.*

Staff observed that PMs 56-01.1 (Percent Installations Completed Within the Customer Requested Due Date – 2-Wire Analog – 1-10), 56-01.2 (Percent Installations Completed Within the Customer Requested Due Date – 2-Wire Analog – 11-20) indicate that the Company performed much closer to parity when responding to customer requested due dates beyond the standard intervals. ICC Staff Ex. 32.0 at ¶ 83. Although the data indicates that the Company generally met customers requested due dates beyond the standard intervals, the Company failed to meet a significant percentage, 38.27%, for orders of 11-20 lines in September of 2002. *Id.* Staff also observed that the Company missed 13.51% of customer requested due dates in November of 2002, but benefited in terms of meeting the parity standard for PM 56-01.2 due to its poor retail performance. *Id.* As Ehr Attachment B reveals, the problems the Company is experiencing with respect to meeting customer requested due dates for orders of 11-20 loops appear to be of recent vintage, indicating that this is an emerging rather than a waning problem. *Id.*

Staff observed that the company's performance with respect to loops with LNP was much better when measured relative to the benchmarks for these measures contained in the Company's business rules. ICC Staff Ex. 32.0 at ¶ 84. As indicated in the Company's business rules the Company includes in average installation intervals all orders for service where the service request specifies a standard installation interval or an interval not more than one day longer than the standard installation interval. *Id.* Staff indicated that the information contained in Ehr Attachment B shows that the Company met the standard interval plus one-day benchmark in all months for all measures in 19 of 21 monthly comparisons. *Id.* In October 2002 the company narrowly missed the benchmark for average installation of Non-CHC – Loops – 11-20 with LNP of 8 days, providing service on average in 8.19 days. *Id.* In November 2002 the Company missed the benchmark for average installation of CHC - Loops with LNP - 21+ of 11 days, providing service on average in 14 days. *Id.*

Staff explained that PMs 58-05 (Percent Ameritech-Caused Missed Due Dates – 8.0 dB Loops without Test Access), 63-03 (Percent Ameritech-Caused Missed Due Dates > 30 days – 8.0 dB Loops without Test Access), 60-03.1 (Percent Missed Due Dates Due to Lack of Facilities – 8.0 dB Loops without Test Access), and 60-03.2 (Percent Missed Due Dates Due to Lack of Facilities > 30 days – 8.0 dB Loops without Test Access) all indicate that the company is not missing due dates more frequently for CLECs than it does for its retail customers. ICC Staff Ex. 32.0 at ¶ 85. In fact, the data indicates that the Company misses many more retail customer due dates than CLEC customer due dates. PM 62-03 (Average Delay Days for AIT Caused Missed Due Dates – 8.0 dB Loops without Test Access) indicates that delay days caused by Company caused missed due dates equaled 11.94 days in September 2002 for CLECs and equaled only 6.01 days in September 2002 for the Company's retail customers. *Id.* Staff notes that relative performance improved, however, in October and November 2002 with the Company's retail customers receiving longer delays than CLEC customers. *Id.*

Staff concluded that the PMs measuring installation timing for voice grade loops provide mixed evidence on the whether the Company is providing voice grade loops in a nondiscriminatory manner that allows competitors to compete in Illinois. ICC Staff Ex. 32.0 at ¶ 86. While there is some evidence that the Company is meeting its due dates, other evidence suggests significant delays in CLEC installation provisioning. *Id.*

#### **(b) Installation Quality**

Dr. Zolnierrek testified that PM 59-05 (Percent Trouble Reports Within 30 Days of Installation – 8.0 dB Loops without Test Access) reveals that CLECs have had troubles with 5.43%, 4.29%, and 4.26% of recently installed voice grades loops in September, October, and November, respectively. ICC Staff Ex. 32.0 at ¶ 87. Dr. Zolnierrek observed, however, that the Company does meet parity criteria for PM 59-05 because it had many more troubles with recently installed voice grade loops supplied to its retail customers in these months. *Id.*

#### **(c) Maintenance and Repair**

Staff explained that the PMs measuring maintenance and repair performance for voice grade loops are PM 65-05 (Trouble Report Rate – 8.0 dB Loops without Test Access), PM 65.1-05 (Trouble Report Rate Net of Installation and Repeat Reports – 8.0 dB Loops without Test Access), PM 67-05 (Mean Time to Restore – Dispatch – 8.0 dB Loops without Test Access), PM 67-20 (Mean Time to Restore – No Dispatch – 8.0 dB Loops without Test Access), PM 69-05 (Percent Repeat Reports – 8.0 dB Loops without Test Access), and PM 66-05 (Percent Missed Repair Commitments – 8.0 dB Loops without Test Access). ICC Staff Ex. 32.0 at ¶ 88. Staff pointed out that, with the exception of a narrow miss in September 2002 for PM 65-05, all of these maintenance and repair performance measures indicate that the Company is providing maintenance and repair service at parity. *Id.* However, in some instances the Company meets parity standards simply because of its poor retail performance. *Id.* For example, the data for PM 69-05 indicates that the Company had over 6% repeat trouble reports for CLEC loops in each of September, October, and November of 2002. However, the Company had over 10% repeat trouble reports for retail loops in each of these months. *Id.*

#### **(d) FMOD Service**

Dr. Zolnierrek testified that PMs C WI 6 – 04 (Percent Form A Within Interval – 8.0 dB Loops without Test Access), C WI 7-01.4 (Percent Form B Within 72 Hours – 8.0 dB Loops without Test Access), C WI 7-02.4 (Percent Form B Within 72 Hours – 8.0 dB Loops without Test Access), C WI 7-03.4 (Percent Form D Within 72 Hours – 8.0 dB Loops without Test Access), C WI 8-04 (Percent Form B Return FOC with New Due Date Within 24 Hours – 8.0 dB Loops without Test Access), and C WI 9-04 (Percent Form C Return FOC with New Due Date Within 24 Hours – 8.0 dB Loops without Test Access) all indicate that the Company returns FMOD notifications related to voice grade



loops in a timely manner. ICC Staff Ex. 32.0 at ¶ 89.

PM C WI 11-03.4 (Percent FMOD Due Dates Met Following Form D – 8.0 dB Loops without Test Access) indicates the Company has met due dates on the few voice grade orders requiring simple modifications. ICC Staff Ex. 32.0 at ¶ 90. However, PM C WI 11-01.4 (Percent FMOD Due Dates Met Following Form B – 8.0 dB Loops without Test Access) indicates the Company is having significant problems meeting due dates for voice grade orders requiring complex modifications. *Id.* Staff explained that throughout the period beginning in December of 2001 and ending in November of 2002 the company has missed due dates a high percentage of the time, including missing as many as 25% of due dates in April and September of 2002. *Id.*

Dr. Zolnierrek testified that when the Company misses an installation due date for a CLEC customer CLEC customer satisfaction may be affected. ICC Staff Ex. 32.0 at ¶ 91. Therefore, in Dr. Zolnierrek's opinion, the Company's failure to meet FMOD due dates for complex orders may impair CLECs' ability to compete in Illinois. *Id.*

#### **(e) Staff's Recommendation**

Staff concluded that the PM data submitted by the Company indicates that the Company is not always meeting parity criteria for installation timeliness when installing voice grade loops. ICC Staff Ex. 32.0 at ¶ 92. For the three months ending in November of 2002, the Company failed to meet parity criteria for PMs 55-01.1, 55-01.2, and 55-01.3 three out of the eight times parity criteria were evaluated. *Id.* As reflected in PMs 56-01.1 and 56-01.2 the Company missed parity criteria for meeting non-standard customer requested due dates one out of the six times parity criteria were evaluated. *Id.* In September of 2002, missed due dates caused a delay in provisioning of CLEC service measured by submeasure 62-03 that was much longer than missed due date caused delays for the Company's retail customers. *Id.* Staff points out that sub-measures 58-05 and 60-03.1, however, indicate that the Company is meeting parity standards with respect to Company caused missed due dates and due dates missed due to lack of facilities. *Id.* With respect to loops with LNP the Company generally met benchmark installation intervals. *Id.* Staff also found that installation quality and repair and maintenance of installed voice grade loops is generally provided at parity. *Id.* The Company is, however, as submeasure C WI 11 – 01.4 indicates, failing parity criteria for meeting due dates for FMOD installations. *Id.*

Staff observed that, as a general rule, UNE loops are the network element that is most difficult for competitors to self-supply on a mass-market scale. ICC Staff Ex. 32.0 at ¶ 93. Staff also observed that the FCC began a process to remove UNE switching from the list of UNEs with the UNE Remand Order, and that this action has increased the importance of stand-alone UNE loops (loops that are not sold in combination with switching and/or transport) to the success of UNE based local telephone competition. *Id.* Staff points out that for these reasons it is essential, if competitors are to have the opportunity to compete for local telephone customers in Illinois using stand alone voice grade loops, that SBC Illinois' performance in installing and servicing voice grade loops not impair or impede the ability of competitors to compete. *Id.* Thus, Staff recommends

that the Commission require the Company to correct the voice grade loop provisioning problems identified above, in particular the disparity in average installation intervals and missed customer requested due dates and the problems with provisioning voice grade loops requiring complex facilities modification, as a prerequisite to a positive consultation with the FCC regarding whether the Company is provisioning its voice grade loop service in accordance with the requirements of Section 271(c)(2)(B)(iv). *Id.* Staff further recommended that the Company, in its rebuttal affidavits, explain why these problem are occurring and demonstrate that proper steps have been taken to ensure that these problem are corrected and will not recur on a going forward basis. *Id.*

### **(3) Staff's Reply Position**

#### **(a) Analysis of Company Response Regarding Installation Timing**

Rather than address the Company's problem meeting parity criteria for PMs 55-01.1, 55-01.2, and 55-01.3, Mr. Ehr notes only that the Company met parity criteria for the September 2002 to November 2002 period in two of three months for submeasures 55-01.1 and 55-01.2. See ICC Staff Ex. 44.0 at ¶ 19. Mr. Ehr does not address the Company's failure to meet parity criteria in one of two months for which data was available for submeasure 55-01.3. *Id.* Nor does he address the fact that the Company failed parity criteria for installation intervals for voice-grade loops more than 37% of the time in the period beginning in September 2002 and ending in November 2002. *Id.* Staff observed that recent performance measurement data indicate that the Company's performance problems with respect to measures 55-01.1, 55-01.2, and 55-01.3 have continued. *Id.* at ¶ 20. For example the Company failed parity tests with respect to measure 55-01.2 in December 2002 and failed parity tests with respect to measure 55-01.1 in January 2003. *Id.* Similarly, Mr. Ehr does not address the Company's failure to meet parity standards with respect to PMs 56-01.1 and 56-01.2. *Id.* at ¶ 21. Nor does he explain why the Company has missed these measures. *Id.* Staff observed that with respect to measures 56-01.1 and 56-01.2 the Company's performance has improved in recent months, passing all parity tests for these measures in both December 2002 and January 2003. *Id.*

Staff's analysis of the Company's response FMOD service issues is addressed in Section VIII.A.e)(2) below

#### **(b) Staff's Recommendation**

In Staff's direct case Dr. Zolnierrek expressed the opinion that "... it is essential if competitors are to have the opportunity to compete for local telephone customers in Illinois using stand alone voice grade loops that SBC Illinois' performance in installing and servicing voice grade loops not impair or impede competitors ability to compete." ICC Staff Ex. 44.0 at ¶ 22. The Company's rebuttal case failed to address its performance problems with respect to voice grade loops. *Id.* Therefore, as a prerequisite to a positive consultation with the FCC regarding whether the Company is

provisioning its voice grade loops in accordance with the requirements of Section 271(c)(2)(B)(iv), Staff continues to recommend that the Company take corrective action to ensure that it is providing voice grade loops at parity. *Id.*

#### **(4) Commission Analysis And Conclusion**

With respect to unbundled local loops – unbundled voice grade loops, the PM data submitted by the company indicates that the company is not always meeting parity criteria for installation timeliness, when installing voice grade loops. For the three months ending in November of 2002, the company failed to meet parity criteria for PMs 55-01.1, 55-01.2, and 55-01.3 three out of the eight times parity criteria were evaluated. Furthermore, recent performance data indicate that the Company's performance problems with respect to measures 55-01.1, 55-01.2, and 55-01.3 have continued, with the Company failing parity tests with respect to measure 55-01.2 in December 2002 and failing parity tests with respect to measure 55-01.1 in January 2003.

The Staff recommends that, as a prerequisite to a positive consultation with the FCC regarding whether the company is provisioning its voice grade loop service in accordance with the requirements of Section 271(c)(2)(B)(iv), we should require the company to correct the voice grade loop provisioning problems identified above, in particular the disparity in average installation intervals and missed customer requested due dates and the problems with provisioning voice grade loops requiring complex facilities modification. Moreover, the Staff recommends that the company should explain why these problem are occurring and demonstrate that proper steps have been taken to ensure that these problem are corrected and will not recur on a going forward basis.

Again, we adopt the Staff's recommendation and direct the company to implement the measures described above.

#### **d) Unbundled BRI (digital) Loops**

65. Unbundled Local Loops – Unbundled BRI (digital) Loops: The PM data submitted by the Company indicates that, regarding the Company's performance in installing and servicing BRI loops, the Company is providing service at parity with respect to installation timeliness and provisioning quality. While CLEC customers experience more troubles after installation, the Company generally responds to these troubles faster and more effectively than it does to its retail customer's post-installation troubles. Submeasure C WI 11-01.5 indicates the Company is missing FMOD installation due dates more often for CLECs than for its own retail customers.

#### **(1) Staff's Initial Position**

##### **(a) Installation Timeliness**

Staff explained that PM 55-02.1 (Average Installation Interval – Digital Loops – 1-10) indicates that the Company provides digital loops to CLECs and its retail customers

at parity. ICC Staff Ex. 32.0 at ¶ 94. Staff observed that while the average installation intervals for digital loops are significantly longer than the benchmarks listed in the Company's business rules, the Company provides service to its own retail customers that does not meet these benchmarks. *Id.* Therefore, while the service provided CLECs may not be particularly timely, it is at parity with the service provided the Company's retail customers, and thus meets the performance criteria established in the Company's business rules. *Id.*

Similarly, PM 56-02.1 (Percent Installations Completed Within the Customer Requested Due Date –Digital Loops – 1-10) also meets parity standards despite missing the 95% benchmark referenced in the Company's business rules in September 2002. ICC Staff Ex. 32.0 at ¶ 95. Notably the Company did meet the 95% benchmarks in the more recent months of October and November of 2002. *Id.*

Staff observed that PMs 58-06 (Percent Ameritech-Caused Missed Due Dates – BRI Loop with Test Access), 63-04 (Percent Ameritech-Caused Missed Due Dates > 30 days – BRI Loops with Test Access), 60-04.1 (Percent Missed Due Dates Due to Lack of Facilities – BRI Loops with Test Access), and 63-04.2 (Percent Missed Due Dates Due to Lack of Facilities > 30 days – BRI Loops with Test Access) all indicate that the company is not missing due dates more frequently for CLECs than it does for its retail customers and in fact misses many more retail customer due dates. ICC Staff Ex. 32.0 at ¶ 96. PM 62-04 (Average Delay Days for AIT Caused Missed Due Dates – BRI Loops with Test Access) indicates that delay days caused by the Company missed due dates were much higher on average for BRI Loops provided to the Company's retail customers than they were for BRI Loops provided to CLECs. *Id.*

Staff concluded that the PMs measuring installation timing for digital loops provide evidence that the Company is meeting its due dates generally more often for CLECs than the Company does for its retail customers. ICC Staff Ex. 32.0 at ¶ 97.

### **(b) Installation Quality**

Staff noted that although the quality of the digital loops being provided by the Company to CLECs appears to be poor, it is better than the quality of digital loops being provided to the Company's retail customers. ICC Staff Ex. 32.0 at ¶ 98. PM 59-06 (Percent Trouble Reports Within 30 Days of Installation – BRI Loops with Test Access) reveals that CLECs have had troubles with 6.97%, 8.59%, and 7.90% of recently installed digital loops in September, October, and November. *Id.* However, the Company meets the parity performance criteria established in the Company's business rules for PM 59-06 because it had many more troubles with recently installed BRI loops supplied to its retail customers in these months. *Id.*

### **(c) Maintenance and Repair**

Dr. Zolnierrek explained that the PMs measuring maintenance and repair performance for digital loops are PM 65-06 (Trouble Report Rate – BRI Loops with Test Access), PM 65.1-06 (Trouble Report Rate Net of Installation and Repeat Reports – BRI

Loops with Test Access), PM 67-06 (Mean Time to Restore – Dispatch – BRI Loops with Test Access), PM 67-21 (Mean Time to Restore – No Dispatch – BRI Loops with Test Access), PM 69-06 (Percent Repeat Reports – BRI Loops with Test Access). ICC Staff Ex. 32.0 at ¶ 99. These PMs indicate that the CLEC customers experience more troubles after installation than do the Company's retail customers, but that the Company generally responds to these troubles faster and more effectively than it does to its retail customers' troubles. *Id.*

PM 65-06 (Trouble Report Rate – BRI Loops with Test Access) indicates that CLECs experienced 0.98, 1.17, and 1.10 troubles per 100 lines while the Company's retail customers experienced only 0.67, 0.70, and 0.52 troubles in September, October and November of 2002, respectively. ICC Staff Ex. 32.0 at ¶ 100. Staff notes that this causes the Company to fail the parity test for PM 65-06, a fact that Mr. Ehr does not address in his analysis. *Id.* Staff also notes that the Company also fails to meet parity criteria for PM 65.1-06 (Trouble Report Rate Net of Installation and Repeat Reports – BRI Loops with Test Access) in November 2002 with the data suggesting that the Company's performance is getting worse over time. *Id.* at ¶ 101.

Staff observes that PM 67-06 (Mean Time to Restore – Dispatch – BRI Loops with Test Access), PM 67-21 (Mean Time to Restore – No Dispatch – BRI Loops with Test Access), and PM 69-06 (Percent Repeat Reports – BRI Loops with Test Access) all indicate that the company responds to troubles following installation better for CLECs than the Company does for its retail customers. ICC Staff Ex. 32.0 at ¶ 102.

#### **(d) FMOD Service**

Staff explains that with one exception PMs C WI 6 – 05 (Percent Form A Within Interval – BRI Loops with Test Access), C WI 7-01.5 (Percent Form B Within 72 Hours – BRI Loops with Test Access), C WI 7-02.5 (Percent Form B Within 72 Hours – BRI Loops with Test Access), C WI 7-03.5 (Percent Form D Within 72 Hours – BRI Loops with Test Access), C WI 8-05 (Percent Form B Return FOC with New Due Date Within 24 Hours – BRI Loops with Test Access), and C WI 9-05 (Percent Form C Return FOC with New Due Date Within 24 Hours – BRI Loops with Test Access) all indicate that the Company returns FMOD notifications related to BRI loops in a timely manner. ICC Staff Ex. 32.0 at ¶ 103.

PM C WI 7-01.5 (Percent Form B Within 72 Hours – BRI Loops with Test Access) indicates the Company failed to return notification of complex modifications within 72 hours 95% of the time in September and October of 2002. However, the Company performance has steadily improved since August 2002, and Form Bs were returned on a timely basis in November of 2002. ICC Staff Ex. 32.0 at ¶ 104.

Staff notes that PM C WI 11-03.5 (Percent FMOD Due Dates Met Following Form D – BRI Loops with Test Access) indicates the Company has not had any BRI loops requests requiring simple modification proceed to provisioning. ICC Staff Ex. 32.0 at ¶ 105. However, PM C WI 11-01.5 (Percent FMOD Due Dates Met Following Form B – BRI Loops with Test Access) indicates the Company is having significant problems meeting due dates for BRI loop orders requiring complex modifications. *Id.* Throughout

the period beginning in December of 2001 and ending in November of 2002 the company has missed due dates a high percentage of the time, including missing as many as 30% of due dates in September of 2002. *Id.* Staff points out that, as explained above, missed installation dates may impair CLECs ability to compete in Illinois. *Id.*

### **(e) Staff's Recommendation**

Staff concludes that the evidence regarding the Company's performance in installing and servicing BRI loops indicates that the Company is providing service at parity with respect to installation timeliness and provisioning quality. ICC Staff Ex. 32.0 at ¶ 106. While the evidence suggests that CLEC customers experience more troubles after installation than do the Company's retail customers, the Company generally responds to these troubles faster and more effectively than it does to its retail customers' post-installation troubles. *Id.* Thus, Staff finds, based on the performance data submitted by the Company, that the Company is provisioning its standard BRI Loop service in accordance with the requirements of Section 271(c)(2)(B)(iv) of the Telecommunications Act of 1996 ("1996 Act"). *Id.* With respect to the FMOD exception noted above, however, Staff finds that the data does indicate the Company is not meeting parity standards with respect to meeting due dates associated with BRI loop orders requiring complex modification. *Id.*

Thus, as a prerequisite to a positive consultation with the FCC regarding whether the Company is provisioning its standard BRI Loop service in accordance with the requirements of Section 271(c)(2)(B)(iv), Staff recommends that the Commission require the Company to correct the problems it has with provisioning BRI loops requiring complex facilities modification. ICC Staff Ex. 32.0 at ¶ 107. Staff further recommended that the Company explain in its rebuttal affidavits why these problems are occurring and demonstrate that proper steps have been taken to ensure that these problems are corrected and will not recur on a going forward basis. *Id.*

## **(2) Staff's Reply Position**

Staff's analysis of the Company's response FMOD service issues is addressed in Section VIII.A.e)(2) below

### **e) Unbundled DS1 Loops**

The PM data submitted by the Company indicates that the Company is providing unbundled DS1 loop service at parity with respect to installation timeliness, installation quality, and repair and maintenance service. The submeasure C WI 11 – 01.6 indicates, however, that the Company is not meeting due dates associated with DS1 loop orders requiring complex modification.

## **(1) Staff's Initial Position**

### **(a) Installation Timeliness**

Dr. Zolnierrek testified that PM 55-03 (Average Installation Interval – DS1 Loops) indicates that the Company provides DS1 loops to CLECs and its retail customers at parity. ICC Staff Ex. 32.0 at ¶ 108. While the average installation intervals for DS1 loops are significantly longer than the benchmarks listed in the Company's business rules, the Company provides service to its own retail customers that does not meet these benchmarks. *Id.* Therefore, while the service provided CLECs may not be particularly timely, Staff concludes that it is at parity with the service provided the Company's retail customers and meeting the performance standards established in its business rules. *Id.* Similarly, the results for PM 56-03 (Percent Installations Completed Within the Customer Requested Due Date – DS1 Loops) indicate that the Company meets parity criteria. *Id.* at ¶ 109.

Staff explained that PM 58-08 (Percent Ameritech-Caused Missed Due Dates – DS1 Loops) indicates the Company did not provide service at parity in September 2002, but did so in October and November of 2002. ICC Staff Ex. 32.0 at ¶ 110. Notably, service provided to CLECs with respect to this measure has not only improved relative to that given to the Company's retail customers, but also in absolute terms in recent months. *Id.* PM 63-06 (Percent Ameritech-Caused Missed Due Dates > 30 days – DS1 Loops) further indicates that the Company does not cause due date misses for CLEC installations significantly more often than it causes due date misses for its retail customer installations. *Id.*

Similarly, Staff notes that PM 60-06.1 (Percent Missed Due Dates Due to Lack of Facilities – DS1 Loops) indicates the Company did not provide service at parity in September 2002, but did so in October and November of 2002. ICC Staff Ex. 32.0 at ¶ 111. Staff finds it notable that service provided to CLECs with respect to this measure has not only improved relative to that given to the Company's retail customers, but also in absolute terms in recent months. *Id.* Again, PM 63-06 (Percent Missed Due Dates Due to Lack of Facilities > 30 days – DS1 Loops) further indicates that the Company did not miss due dates for CLEC installations due to lack of facilities significantly more often than it missed installations for its retail customers for this reason. *Id.*

The data for PM 62-06 (Average Delay Days for AIT Caused Missed Due Dates – DS1 Loops) indicates that there was a significant meltdown in the Company's provisioning in November 2002. ICC Staff Ex. 32.0 at ¶ 112. Delay days caused by the Company missed due dates averaged 53.29 days for DS1 Loops provided to CLECs and only 5.04 days for DS1 Loops provided to the Company's retail customers in November of 2002. *Id.*

Thus, Staff concluded that while the PMs measuring installation timing for digital loops provide evidence that the Company is meeting its due dates, in general, equally well for CLECs and for its retail customers, the disparity in average delays between service provided to CLECs and to the Company's retail customers resulting from Company caused due date misses in November 2002 is extremely large. ICC Staff Ex. 32.0 at ¶ 113.

### **(b) Installation Quality**

Staff observed that PM 59-08 (Percent Trouble Reports Within 30 Days of Installation – DS1 Loops) reveals that CLECs have fewer troubles on average with new DS1 loops than do Ameritech retail customers. ICC Staff Ex. 32.0 at ¶ 114.

### **(c) Maintenance and Repair**

The PMs measuring maintenance and repair performance for DS1 Loops are PM 65-08 (Trouble Report Rate – DS1 Loops), PM 65.1-08 (Trouble Report Rate Net of Installation and Repeat Reports – DS1 Loops), PM 67-08 (Mean Time to Restore – Dispatch – DS1 Loops), PM 67-23 (Mean Time to Restore – No Dispatch – DS1 Loops), and PM 69-08 (Percent Repeat Reports – DS1 Loops). ICC Staff Ex. 32.0 at ¶ 115. Staff found that these PMs indicate that the CLECs receive maintenance and repair service from the Company at parity with the Company's retail customers. *Id.*

Staff noted that PM 65-08 (Trouble Report Rate – DS1 Loops) indicates that CLECs experienced 4.50, 5.24, and 3.63 troubles per 100 lines while the Company's retail customers experienced only 3.76, 4.39, and 3.43 troubles per 100 lines in September, October and November of 2002, respectively. ICC Staff Ex. 32.0 at ¶ 116. From Ehr Attachment B it appears that CLECs experienced a significant increase in troubles beginning in mid-2002, both relative to troubles experienced by the Company's retail customers and absolutely. *Id.* Staff explained that the information indicates that as of November 2002 the relative disparity had been largely removed. However, with the exception of November 2002, CLECs experienced significantly more troubles in the second of half of 2002 relative to troubles experienced by the Company's retail customers. *Id.*

The Company met the parity criteria for PM 65.1-08 (Trouble Report Rate Net of Installation and Repeat Reports – DS1 Loops) in September, October and November 2002. ICC Staff Ex. 32.0 at ¶ 117. Staff noted, however, that in absolute terms CLEC post installation trouble reports increased substantially throughout 2002 increasing to levels experienced generally throughout 2002 by the Company's retail customers. *Id.*

Finally, Staff observed that PM 67-08 (Mean Time to Restore – Dispatch – DS1 Loops), PM 67-23 (Mean Time to Restore – No Dispatch – DS1 Loops), and PM 69-08 (Percent Repeat Reports – DS1 Loops) all indicate that the company responds to troubles following installation at parity. ICC Staff Ex. 32.0 at ¶ 118.

### **(d) FMOD Service**

Staff explained that, with one exception, PMs C WI 6 – 06 (Percent Form A Within Interval – DS1 Loops), C WI 7-01.6 (Percent Form B Within 72 Hours – DS1 Loops), C WI 7-02.6 (Percent Form B Within 72 Hours – DS1 Loops), C WI 7-03.6 (Percent Form D Within 72 Hours – DS1 Loops), C WI 8-06 (Percent Form B Return



FOC with New Due Date Within 24 Hours – DS1 Loops), and C WI 9-06 (Percent Form C Return FOC with New Due Date Within 24 Hours – DS1 Loops) all indicate that the Company returns FMOD notifications related to DS1 loops in a timely manner. ICC Staff Ex. 32.0 at ¶ 119.

The data for PM C WI 7-01.6 (Percent Form B Within 72 Hours – DS1 Loops) indicates the Company failed to return notification of complex modifications within 72 hours 95% of the time in September and October of 2002. ICC Staff Ex. 32.0 at ¶ 120. However, the Company performance has steadily improved since September 2002 and Form Bs were returned on a timely basis in November of 2002. *Id.*

Staff notes that PM C WI 11-03.6 (Percent FMOD Due Dates Met Following Form D – BRI Loops with Test Access) indicates the Company has not had any DS1 loop requests requiring simple modification proceed to provisioning. ICC Staff Ex. 32.0 at ¶ 121. However, PM C WI 11-01.6 (Percent FMOD Due Dates Met Following Form B – BRI Loops with Test Access) indicates the Company is having significant problems meeting due dates for BRI loop orders requiring complex modifications. *Id.* Throughout the period beginning in December of 2001 and ending in November of 2002, the Company has missed due dates a high percentage of the time, including missing as many as 11.54% of due dates in October of 2002. As explained above, Staff maintains that the Company's failure to install loops on time may impair a CLECs ability to compete in Illinois. *Id.*

#### **(e) Staff's Recommendation**

The evidence regarding the Company's performance in installing and servicing DS1 loops indicates that the Company is providing service at parity with respect to installation timeliness, installation quality, and repair and maintenance service. ICC Staff Ex. 32.0 at ¶ 122. Staff observes that the only anomaly in the information is the extremely large delays to CLEC customers resulting from Company caused missed due dates in November 2002. *Id.* Mr. Ehr explained that this problem resulted from problems with a single order which was delayed for about 230 days and agreed to research the problem with this order and explain the cause. *Id.* Submeasure C WI 11-01.5 indicates the Company is missing FMOD installation due dates more often for CLECs than for its own retail customers. *Id.*

Staff recommended that the Commission require the Company to correct the problems it has with provisioning DS1 loops requiring complex facilities modification as a prerequisite to a positive consultation with the FCC regarding whether the Company is provisioning its DS1 loops in accordance with the requirements of Section 271(c)(2)(B)(iv). ICC Staff Ex. 32.0 at ¶ 123. Staff further recommended that the Company explain in its rebuttal affidavits why these problems are occurring and demonstrate that proper steps have been taken to ensure that these problems are corrected and will not recur on a going forward basis. *Id.*

## **(2) Staff's Reply Position**

### **(a) Analysis of Company's Response Regarding Unbundled Voice Grade Loops/Unbundled BRI (digital) Loops/Unbundled DS1 Loops – FMOD Due Dates**

Staff notes that with respect to the Company's failure to meet FMOD due dates Mr. Ehr argues that the Company met parity criteria for PM C WI 11 in October and November of 2002. ICC Staff Ex. 44.0 at ¶ 24. With respect to PM C WI 11-01.4, the Company missed 10% of FMOD due dates for voice-grade loops in December 2002 and over 44% of FMOD due dates for voice-grade loops in January 2003. *Id.* In both cases, however, there were too few observations for the Company to compute z-scores. *Id.* With respect to PM C WI 11-01.5, the Company did meet the parity standard in its business rules in December. *Id.*

With respect to PM C WI 11-01.6, Staff observed that the Company's performance in January 2003 improved significantly with the Company meeting all DS1 FMOD due dates. *Id.* Examining the Company's performance in the period beginning in November 2002 and ending in January 2003, the Company has not failed a single parity test as measured by z-score calculations. *Id.*

### **(b) Staff's Recommendation**

Staff observes that the Company has missed a high percentage of FMOD due dates in the past year and has of late continued with respect to some sub-measures to miss a high percentage of due dates. ICC Staff Ex. 44.0 at ¶ 25. However, because the Company has not failed any parity tests for the most recent three months of performance measurement data, Staff modified its recommendation with respect to the Company's performance as measured by PM C WI 11. *Id.* Specifically, Staff now recommends that the Commission find that the Company is meeting FMOD due dates for voice-grade loops, BRI loops, and DS1 loops in accordance with the requirements of Section 271(c)(2)(B)(iv). *Id.*

## **B. Compliance Issues**

### **1. Docket No. 00-0393 Compliance**

#### **a) Staff's Initial Position**

The Staff notes that we determined in Phase 1 of this docket that SBC should take certain remedial actions In Phase 2 concerning UNE loops:

Our concerns with respect to the satisfaction of Checklist Item 4 are centered on certain line splitting matters discussed above and on the compliance tariff for Dockets 00-0393 and 01-0164. We expect the

company to address these concerns to our satisfaction in Phase II together with a showing on resolution of the “hot cuts” issue.<sup>102</sup>

The Staff further directs our attention to Paragraphs 958 and 959 of the Phase 1 Interim Order in which we require SBC to demonstrate compliance with the Commission’s Orders in Docket 00-0393:

That said, AT&T has set out a matter of grave concern to this Commission. Ameritech Illinois needs to show that its tariff is compliant with our Order in Docket 00 - 0393. Until this showing is made, the company will not meet the standards for provision of loops.

As it stands, the Company and Staff will report to this Commission, in Phase 2, on the propriety of Ameritech's compliance tariff for Docket 00 - 0393 and we urge the parties to result their differences in the interim.

Phase I Order, ¶¶ 958-59

Thus, the Staff argues, we have determined that, if we are to endorse SBC’s application for Section 271 authority concerning unbundled local loops, SBC must demonstrate that its Broadband UNE (“Project Pronto”) tariff complies fully with our Orders in Docket 00 – 0393.

SBC witness Pat Fleck’s January 22, 2003 affidavit purports to show that SBC IL’s Broadband UNE tariff complies with the Commission’s Orders in Docket No. 00-0393. However, the Staff argues that Ms. Fleck’s affidavit fails to do so for the simple reason that SBC Illinois’ tariff does not comply fully with the Commission’s Orders in Docket 00-0393. The Staff argues that the company’s failure to comply is demonstrated by the following deficiencies.

First, the Staff points to Paragraph 7 of Ms. Fleck’s affidavit which addresses collocation requirements in the combined voice and data configuration of SBC’s Broadband (Project Pronto) UNE offering. There, Ms. Fleck cites our Order on Second Rehearing in Docket 00-0393 (at page 4) as stating that “.. access to the end-to-end Project Pronto UNE is via collocation in the central office”. Ms. Fleck advances this as evidence that we ruled that access to both the data and voice portions of a Project Pronto loop in a voice and data configuration are via collocation only, with no other option available for CLECs. This contention, avers the Staff, is incorrect, and is a misreading of our Order on Rehearing.

The Staff notes as an initial matter that Ms. Fleck’s citation of our Second Order on Rehearing is a misquote that omits an important detail. The correct citation is “... access to the end-to-end Project Pronto UNE is via collocation in a central office (section 4.3) [emphasis added]...”. The Staff contends that Section 4.3 refers specifically and solely to collocation for access to the data portion of a combined voice

---

<sup>102</sup> Phase 1 Interim Order On Investigation in Docket 01-0662 at paragraph 968.

and data Project Pronto loop configuration, and not to the voice portion. According to the Staff, our Orders in Docket 00-0393 make abundantly clear that CLEC collocation is not required for access to the voice portion of such loops.

To demonstrate this, the Staff urges us to examine closely the pertinent portions of our September 26, 2001 Order on Rehearing. There, we adopted Staff's proposal that SBC provide the Project Pronto broadband product "...in the form of an end-to-end unbundled product -- a sort of N.G.D.L.C. UNE P." In adopting Staff's proposal, we ruled that:

[W]e accept Staff's alternative proposal and order Ameritech to file, in Illinois, an interim tariff detailing a end-to-end H.F.P.L. UNE based upon the contract terms ordered by the arbitrators in Texas. We adopt, with modifications, the proposed tariff attached to Staff's Reply to Briefs on Exception.<sup>103</sup>

Ordering Paragraph No. 4 of this Order on Rehearing directed SBC to file: within 30 days of the entry of this order, an H.F.P.L. UNE tariff that mirrors Appendix A hereto, as modified.

Staff notes that Appendix A to our Order on Rehearing lacks a collocation requirement in this document. Rather, in the Staff's view, we directed by this document that collocation would be an option that CLECs may or may not elect. The Staff sets forth the specific language of Appendix A at some length, and it is as follows:

#### **4. NETWORK CONFIGURATIONS**

*4.3. One of the CLEC's means of access to the data portion of the Project Pronto architecture (as provisioned through the OCD), whether in the Data configuration or Combined Voice and Data configuration, is via collocation in the end office. If the CLEC decides to access Project Pronto via collocation, CLEC is required to be collocated at each end office in which CLEC desires to access the Project Pronto architecture. CLEC is responsible to ensure that any necessary collocation arrangement, whether virtual and/or physical, and any subsequent collocation augments are completed and in place in each serving wire center in which CLEC desires to place an order for any of the network components described within this Agreement.*

*4.4. CLEC's means of access to the voice portion of the Project Pronto in*

---

<sup>103</sup> The modifications referred to (nine in total) were made by the Commission as a result of arguments raised by the parties in Briefs on Exception, Reply Briefs on Exceptions, Surreply, Responses and Reply. None of the modifications need concern us here as they do not directly impact the issue of collocation requirements for the Broadband UNE offering. It is useful to note here that one of the modifications made by the Commission was to delete Section 5.5.1 and Section 8.7 of Staff's proposed tariff (which were deleted to address SBC concerns over interoffice transport).

the Combined Voice and Data configuration is provided in two different manners. In the instance in which CLEC desires to receive the voice physically in their collocation arrangement from the MDF AMERITECH-IL will extend the voice signal to CLEC's collocation arrangement in a like manner to a standard unbundled loop. Alternatively, subject to the same terms governing availability of the UNE-P with respect to UNE loops in CLEC's interconnection agreement or tariff as applicable, CLEC may order voice service through the Combined Voice and Data configuration in a UNE-Platform ("UNE-P") where no cross-connect to collocation will be necessary.

## **6. COMBINED VOICE AND DATA CONFIGURATION**

6.4. CLEC will be provided the capability to access the voice traffic in two different manners. The first is via collocation, in which case AMERITECH-IL will extend a physical copper connection from the MDF to a CLEC's collocation arrangement in the serving wire center. The second is via a UNE-P arrangement, in which case no collocation will be necessary. Under the UNE-P option, AMERITECH-IL is required to take the voice traffic from the remote terminal to the MDF and crossconnect the traffic to the appropriate switch port.

## **6.6. COMBINED VOICE & DATA NETWORK COMPONENTS**

6.6.3. **Combined Voice and Data UNE-P Loop** This path will be the same as the Combined Voice and Data Loop however it will be extended directly to an unbundled switch port. In this instance the CLEC will not be required to collocate to access the voice traffic.

6.6.4. The specific terms for the provision of UNE-P voice in this arrangement will be the same as those terms provided for in the provision of UNE-P in the Agreement. Rates for the new Combined Voice and Data UNE-P Loop will be set in the permanent pricing phase of Docket No. 00-0393.

The Staff argues that the underlined portions of these provisions demonstrate that CLEC collocation is not required for access to the voice portion of such loops.

The Staff further draws our attention to the fact that, on October 17th, 2001, SBC filed an Application for Clarification and Rehearing of the Commission's September 26, 2001 Order on Rehearing. We granted SBC's request for rehearing on seven issues, and, on the Commission's own motion, directed the parties to address two additional issues. Attached to SBC's Application for Clarification and Rehearing was a "redline version " of the tariff displaying all revisions that SBC requested be made to the tariff. The Staff sets forth the specific language of this redline version at some length, and it is as follows:

#### 4. NETWORK CONFIGURATIONS

4.3 The CLEC's means of access to the data portion of the Project Pronto architecture (as provisioned through the OCD), whether in the Data configuration or Combined Voice and Data configuration is via collocation in the end office. CLEC is required to be collocated at each end office in which CLEC desires to access the Project Pronto architecture. CLEC is responsible to ensure that any necessary collocation arrangement, whether virtual and/or physical, and any subsequent collocation augments are completed and in place in each serving wire center in which CLEC desires to place an order for any of the network components described within this Agreement.

6.6.4. The specific terms for the provision of UNE-P voice in this arrangement will be the same as those terms provided for in the provision of UNE-P in the Agreement. Rates for the new Combined Voice and Data UNE-P Loop will be set following the review of Ameritech's UNE cost studies.

It is the Staff's view that these are only two provisions that bear directly on the collocation issue for which SBC requested revisions to Appendix A. The Staff considers it significant that the revisions requested deal only with access to the data portion of the service, and not the means of access to the voice portion, and that Paragraph 4.3 applies solely to collocation for access to the data functionality. The Staff takes the position that we granted SBC's request for revision of this provision to require collocation for access to the data portion of a Project Pronto loop. Moreover, notes the Staff, SBC made no request for revisions to Paragraphs 4.4, 6.4, 6.6.3 of Appendix A, all of which, among others, clearly require SBC to provide non-collocated access to the voice portion of a Project Pronto loop in a combined voice and data configuration.

Ms. Fleck asserts that parties to this proceeding reached consensus that access to both the data and voice portions of loop in a combined voice and data configuration would be via collocation only. Staff takes the view that this assertion is entirely erroneous, as is clearly revealed by a careful reading of our March 28, 2002 Order on Second Rehearing. That order granted rehearing regarding the collocation issue with respect to access to the data portion of the Broadband UNE. Specifically, the order granted rehearing on the issue of whether:

In section 4.3, language regarding the means of access to the broadband 'UNE' should be clarified by adopting Attachment 1 to Ameritech's Application for Clarification and Rehearing of the Order on Rehearing [AI app. at 6].

The order then notes that:

[T]he parties were able to reach consensus on the resolution of a number of issues upon which rehearing was granted including: ....clarifying that

access to the end-to-end Project Pronto UNE is via collocation in a central office (section 4.3)...

Accordingly, asserts the Staff, the consensus reached among the parties on this issue concerned only SBC's requested revisions to Section 4.3. The parties agreed that collocation should be the sole means of access to the data portion of the broadband UNE, and the Commission endorsed that agreement by adopting SBC's requested revisions to Section 4.3. At no time did Staff agree with SBC or any other party that CLECs should be required to collocate to access the voice portion of the broadband UNE. Any representation otherwise by Ms. Fleck simply is incorrect.

In sum, argues the Staff, our Orders in Docket 00-0393 are quite clear in requiring collocation to the data portion of the Project Pronto combined voice and data offering, and are just as clear that access to the voice component in that configuration does not require CLEC collocation.

Ms. Fleck also asserts in Paragraph 7 (and elsewhere) in her affidavit that:

[T]he issue of whether SBC Illinois should be required to provide such a "non-collocated" broadband UNE product was neither raised nor litigated in the evidentiary record.

The Staff notes that we have already rejected this assertion, which has been raised by SBC on several occasions in this regard. Our September 26, 2001 Order on Rehearing, avers the Staff, makes very clear that we fully considered all issues and objections raised by SBC, and that all parties had been afforded full due process:

The authority to order the filing of an interim tariff is granted the Commission in Section 13-501(b) of the Telecommunications Act. The Commission has reviewed Staff's proposal as modified and finds the terms and conditions of service to be both just and reasonable. This solution moots all of Ameritech's arguments relating to the following issues: line card ownership; line card incompatibility; access to sub-loops; PVP exhaust and stranded capacity. In addition, the granting of Ameritech's Motion to File Instanter and considering all of the arguments raised therein, moots all due process complaints, since Ameritech has been provided a full and fair opportunity to voice its objections to the Staff proposal. [emphasis added]

Accordingly, the Staff urges us to give no weight to this argument erroneously raised again in Ms. Fleck's affidavit.

Staff further states that Ms. Fleck's representations of the nature of the changes required to the Broadband UNE tariff Staff discussed with SBC Illinois are inaccurate. In reality, Staff states that it made clear that a number of significant and substantive changes would be required to SBC's Broadband UNE tariff (filed on May 10th 2002) to bring it into compliance with our Orders in Docket 00 - 0393. The Staff attaches Schedule 28.09 attached to Staff Ex. 28.0 a copy of SBC's Broadband UNE tariff, containing all modifications required to bring this tariff into full compliance with the Commission's Orders in Docket No. 00-0393.

The Staff further notes that, on February 20, 2003, we issued an order suspending SBC's January 17, 2003 Broadband UNE tariff filing, and commenced an investigation into the compliance of this tariff filing with our Orders in Docket No. 00-0393. We determined that we could not conclude that the Broadband UNE tariff complies with our orders in Docket No. 00-0393.

#### **b) Staff's Reply Position**

The Staff notes that, in her March 3, 2003 rebuttal affidavit, SBC Illinois witness Pat Fleck continues to make erroneous assertions concerning SBC's compliance with our Orders in Docket No. 00-0393. Nonetheless, the Staff notes that, in light of recent FCC actions concerning its Triennial Review (of federal rules governing availability of UNEs), this Commission should not rule on SBC Illinois' compliance with Docket No. 00-0393 requirements in this proceeding.

The Staff is now of the opinion that we can and should rule on SBC Illinois' compliance with our Orders in Docket No. 00-0393 requirements in the newly initiated Docket No. 03-0107. In Docket 03-0107, a compliance investigation, we can assess any impacts on Docket No. 00-0393 requirements that arise from the FCC's 2003 Triennial Review Order.

Accordingly, the Staff now recommends that we find that the requirement set forth in paragraph 958 of the Phase I Interim remains vital, but refer this matter to the newly initiated Docket No. 03-0107. In the Staff's opinion, this would be an adequate resolution of this matter for purposes of Phase II of this proceeding.

## **2. Line Splitting – Single Order Process**

#### **a) Staff's Initial Position**

In Phase 1 of this proceeding, Staff directed our attention to the necessity of a "single order process" to support line splitting by CLECs providing voice service via UNE-P. The Phase 1 Interim Order on Investigation addressed this issue, and concluded as follows:

Al now claims to be developing a single order process. A simple claim, however, is not sufficient for our purposes. Ameritech has the burden of presenting evidence to show that it offers a workable single order process. We wait such a showing in Phase II of this proceeding in order to verify the reality of the Company claims.

#### Phase 1 Order, ¶ 946

SBC witness Chapman addresses this issue in her January 22, 2003 affidavit. There she asserts that SBC's single order process is "fully operational" and that it facilitates CLEC line splitting arrangements. However, the Staff contends that Ms. Chapman presents no evidence to support her claim. The Staff notes that we have already declared, "[a] simple claim is not sufficient for our purposes." Ms. Chapman's affidavit does not, in the Staff's view, provide the "evidence to show that [SBC] offers a



workable single order process.” Accordingly, the Staff urges us to require further evidence to satisfy this directive. In response to questioning at the February 10, 2003 workshop in this proceeding, Ms. Chapman indicated that only a small number of orders (approximately 25) have been filled utilizing the single LSR process, and that these were "managed" by SBC. Therefore, as of yet, the Staff is of the opinion SBC has failed to make the required showing that SBC’s single LSR process is viable under conditions of normal order flow through.

Ms. Chapman further asserts at paragraph 9 of her January 22, 2003 affidavit that the SBC single LSR process (in conjunction with CLEC cable pre-wiring from a collocation cage to SBC’s main distribution frame) enables line splitting in UNE-P provisioning arrangements with “no appreciable service disruption”. She asserts that AT&T has endorsed this process in California, and that this process is adequate for Commission purposes in this docket. The Staff professes to no direct knowledge concerning the validity of Ms. Chapman’s assertion that AT&T finds the above-described processes acceptable in California, and reserves comment on this without the opportunity to obtain confirmation from AT&T within the context of this proceeding.

#### **b) Staff Reply Position**

The Staff notes that our Phase 1 Interim Order addressed the necessity of an SBC single order process to support line splitting, concluding as follows:

AI now claims to be developing a single order process. A simple claim, however, is not sufficient for our purposes. Ameritech has the burden of presenting evidence to show that it offers a workable single order process. We wait such a showing in Phase II of this proceeding in order to verify the reality of the Company claims.

Phase I Interim Order, ¶ 946.

The Staff directs our attention to paragraphs 3 through 7 of Ms. Chapman’s March 3, 2003 rebuttal affidavit, wherein she addressed this issue. In Staff’s view, Ms. Chapman adequately explains the reasons underlying SBC’s management of the orders received thus far, and clarifies that there is no impediment to use of the single order process at commercial volumes. Thus, Staff considers this issue resolved for purposes of Phase II of this proceeding, and recommends that we find SBC Illinois in compliance with the requirements of paragraph 946 of the Phase I Interim Order.

### **3. Line Splitting and Non-Discrimination**

Staff observes that, in our Phase I Interim Order, we concluded that SBC must take certain remedial actions to address Commission concerns regarding Checklist Item 4. Specifically, we found that:

Our concerns with respect to the satisfaction of Checklist Item 4 are centered on certain line-splitting matters discussed above and on

the compliance tariff for Dockets 00-0393 and 01-0164. We expect the Company to address these concerns to our satisfaction in Phase II together with a showing on resolution of the “hot cuts” issue.

Phase I Interim Order, ¶ 968 [emphasis added]

Further, we described a major line splitting requirement of the Phase I Interim Order as follows:

[T]he Commission will require Ameritech to submit evidence of how the process [line splitting via UNE-P and CLEC owned splitters] works, and evidence that it is being provided in a nondiscriminatory manner, in Phase II of this proceeding.

Phase I Interim Order, ¶ 941 [Emphasis added]

The Staff views it as significant that Ms. Chapman presents, in its view, no cogent argument or evidence that the process described (relying upon CLEC cable rewiring) satisfies SBC's obligation to make available the line splitting functionality in a nondiscriminatory manner. In paragraph 10 of her affidavit, Ms. Chapman argues that the above-described SBC practice is nondiscriminatory because "...SBC Illinois makes no distinction in the way it processes orders from different CLECs for the UNEs necessary for line splitting." This, in the Staff's estimation, fundamentally misses the point concerning SBC's obligations to provision line splitting in a non-discriminatory manner. The Staff views it as essential to a finding of non-discrimination generally is that SBC "treat" CLECs in a manner identical to (or sufficiently comparable to) its own operations or its own affiliate. In this application, SBC must show that parity (or sufficient comparability) exists between the provisioning of line splitting functionality to CLECs and the provisioning of data functionality to SBC's data affiliate (where SBC Illinois provides the voice service component). The Staff contends that Ms. Chapman has provided no cogent argumentation or evidence to demonstrate that this requirement (as properly defined) has been satisfied. Unless and until SBC does so, it has not demonstrated that it has met all requirements concerning the provisioning of unbundled local loops.

SBC Illinois thus far has taken the position that nondiscrimination in the provision of line splitting functionalities means only that SBC Illinois treat each CLEC in a similar manner, not favoring one over another in some way (see, for example, Ms. Chapman's January 23, 2003 initial affidavit, ¶10). The Staff asserts that this is wholly insufficient as the standard for nondiscrimination that SBC Illinois must demonstrate. The Staff contends that the standard is, in fact that SBC "treat" CLECs in a manner identical to (or sufficiently comparable to) its own operations or its own affiliate. SBC must show that parity (or sufficient comparability) exists between the provisioning of line splitting functionality to CLECs and the provisioning of data functionality to SBC's data affiliate (where SBC Illinois provides the voice service component).

Accordingly, the Staff recommends that we reject SBC Illinois' erroneous position and hold the company to the proper standard for nondiscrimination in line

splitting. That standard is parity between line splitting functionalities provided to CLECs and line-sharing functionalities provided to SBC's own data affiliate (where achievable). For any specific functionalities where parity is not achievable for technical or operational reasons, the proper standard is sufficient comparability. In any event, SBC Illinois should demonstrate comparability sufficient to persuade us that this crucial aspect of SBC's local services market is irreversibly open to competition.

The Staff advises us that modest reflection is sufficient to reveal the fundamental flaw in SBC Illinois' position on this matter. SBC's combined voice/data offering to residential and small business end users is DSL and voice, provided via line sharing with its data affiliate. CLEC offerings that directly compete with this are enabled via line splitting. It should be noted that the FCC will phase out CLECs' ability to line share with SBC Illinois beginning this year, but SBC's ability to line share with its data affiliate (or "line share" with itself if it changes corporate structure to absorb the current data affiliate) will continue.

Further, the Staff argues, under SBC's formulation of nondiscrimination, it would be acceptable if it took 3 months to provision line splitting functionalities to CLECs, while it provisioned combined voice/DSL services (in conjunction with its affiliate) to end users in three days. While the Staff acknowledges that this hypothetical may be extreme, it illustrates the fundamental fallacy of SBC's position. SBC Illinois' position is consistent with an ability to discriminate at will against CLEC's attempting to provide (via line splitting) services directly competitive with SBC's combined voice/xDSL services.

The Staff notes that SBC Illinois raises two basic arguments to defend its position on this matter, both of which we should be rejected. First, SBC argues that the FCC has not imposed a nondiscrimination requirement on line splitting vis-à-vis line sharing in any previous Section 271 application, and thus we cannot or should not do so here.<sup>104</sup> This argument fails, the Staff argues, because we already have determined that we will assess SBC's Section 271 application in light of state specific requirements. Accordingly, we have done so -- and should continue to do so -- in order to reach our own determination concerning whether SBC Illinois' local markets are irreversibly open to competition (and thus whether we should endorse SBC Illinois' Section 271 application). The Staff recommends that we determine that sufficient comparability (and parity where achievable) between CLEC line splitting and SBC's own line sharing is essential to any determination we might make that SBC Illinois' local markets are irreversibly open to competition.

Second, the staff notes that SBC Illinois argues that operational and network differences between line sharing and line splitting render any nondiscrimination requirement between these two arrangements impossible or inappropriate to implement (see Ms. Chapman's rebuttal affidavit, ¶¶9-15). The Staff also urges us to find that this argument fails. From a central office network perspective, these arrangements are directly comparable, if not identical. Ms. Chapman acknowledged this upon questioning at the Phase II transcribed meeting on February 10, 2003, as follows:

Q. I think you also discuss -- maybe you don't discuss this. But in

---

<sup>104</sup> ICC Docket No. 01-0662, Phase II Compliance Rebuttal Affidavit of Carol Chapman, March 3, 2003 at par. 15.

converting UNE-P to line splitting from, again, a network facility standpoint, what's happening in the central office, what works going on, you'd agree with me that putting aside what carriers doing what, the work that's done is identical to work SBC would do when provisioning SBC branded DSL to its own voice customers?

That is you take the loop to your data affiliate's cage and then cross-connect the voice portion of the loop back to the SBC switch?

A. That is correct.

Tr. at 2642-43

The Staff contends that this means that if the local loop provisioned in a line splitting arrangement is xDSL-capable, then from a network perspective CLEC line splitting and SBC Illinois' own line sharing arrangements are directly comparable.

Moreover, the Staff indicates the differences between line splitting and line sharing pointed to by SBC Illinois are overstated and arise largely from a faulty premise. Ms. Chapman's March 3, 2003 rebuttal affidavit contains the assertion that compliance with the appropriate nondiscrimination standard I advocate would:

[M]ake SBC responsible for the way that two CLECs cooperate to engage in line splitting. In effect, SBC Illinois would be required to act as the middleman between the CLECs so that they would not have to cooperate with each other, and SBC Illinois would handle everything for them.

Chapman Rebuttal Affidavit, ¶15

The Staff asserts that, for any CLEC that has agreed to (or acknowledged the need for) a so-called "single customer of record" arrangement to support line splitting, this is an egregious misstatement. For all such carriers, for purposes of ensuring nondiscrimination, the operational relationship between the line splitting CLECs and SBC Illinois will be comparable to the relationship between SBC Illinois and its own line sharing data affiliate.

To the degree that any differences exist between specific aspects or components of line splitting and line sharing that render a parity nondiscrimination standard infeasible, the Staff considers that it is SBC's burden to point these out and demonstrate, in surrebuttal affidavits, that sufficient comparability exists between provisioning of these two arrangements (for such specific aspects). If SBC Illinois fails to do so, the Staff recommends that we find that the crucial requirement set forth in paragraph 941 of our Phase I Interim Order has not been satisfied, and that we consequently decline to endorse SBC's Section 271 application.

#### **a) Commission Analysis And Conclusion**

In our Phase 1 Interim Order, we directed SBC Illinois to demonstrate that parity (or sufficient comparability) exists between the provisioning of line splitting functionality to CLECs and the provisioning of data functionality to SBC's data affiliate (where SBC Illinois provides the voice service component). SBC Illinois has not yet shown that such parity or sufficient comparability exists. Unless and until SBC does so, it will have failed to meet all requirements concerning the provisioning of unbundled local loops.

We hereby direct SBC to demonstrate that parity (or sufficient comparability) exists between the provisioning of line splitting functionalities to CLECs and the provisioning of line sharing functionalities to SBC's data affiliate. In the alternative, we are compelled to conclude that SBC Illinois has failed to satisfy this checklist item.

#### **4. Compliance with the Commission's Order in Docket No. 01-0614**

##### **a) Staff's Initial Position**

The Staff reminds us that we determined in Phase 1 of this docket that SBC should take certain remedial actions In Phase 2 concerning UNE loops:

Our concerns with respect to the satisfaction of Checklist Item 4 are centered on certain line splitting matters discussed above and on the compliance tariff for Dockets 00-0393 and 01-0164. We expect the company to address these concerns to our satisfaction in Phase II together with a showing on resolution of the "hot cuts" issue.<sup>105</sup>

The Staff notes SBC has not yet addressed in Phase 2, as we directed it to, the adequacy of its compliance tariff with respect to our Order in Docket No. 01-0614, and contends that it is now incumbent upon SBC to do so.

The Staff directs our attention to our Order in Docket No. 01-0614, which sets forth two major requirements concerning line splitting. First, it concludes that the only permissible restrictions on the availability and use of cross-connects for line splitting by CLECs involve safety and network reliability:

The Commission also accepts the Joint CLEC proposal relating to the requirement that Ameritech provide cross connects between the facilities of collocated and non-collocated carriers and rejects Ameritech proposed language that would provide cross connects only between the facilities of collocated carriers as without the requirements of section 13-801(c). Section 13-801(c) plainly requires Ameritech to allow, and provide for, cross connects between a noncollocated telecommunications carrier's network elements platform, or a noncollocated telecommunications carrier's transport facilities, and the

---

<sup>105</sup> Phase 1 Interim Order On Investigation in Docket 01-0662, at paragraph 968.

facilities of any collocated carrier, consistent with safety and network reliability standards.

At Paragraph 81 of the same Order, we determined that:

[We] agrees with the Joint CLECs that Section 13 – 801(c) contemplates the exact type of cross-connects that are necessary to provision line splitting without disrupting the end-users service and to retain the feature [i.e., joint voice and data service] intact. There would seem to be little other utility to CLECs from ordering Ameritech to provide this service except to support line splitting, where one CLEC becomes the voice provider and one CLEC becomes the data provider to an end user that currently has voice and data service over a copper loop.

Finally, in paragraph 83 of this Order, we conclude that:

[T]he network platform, as defined by the Legislature in the new enactments, contemplates Ameritech's provision of splitters and the line splitting arrangement as contemplated by the Joint CLECs. Accordingly the Joint CLECs proposed tariff language on this issue is accepted.

The Joint CLEC proposed tariff language addressing cross-connects, which we adopted in our Order in Docket 01-0614, is:

Ameritech Illinois will allow, and at the request of the carrier will provide, cross connects between and UNE-P combination and the facilities of any collocated carrier.

Thus, the Staff argues, SBC must now demonstrate, in its March 3, 2003 responsive affidavits, that its current tariff contains specific provision(s) that comply with this requirement.

The second major determination identified by the Staff concerning line splitting was summed up in paragraph 80 of our Order in Docket 01-0614 as follows:

[A] requesting telecommunications carrier that seeks to provide the customer the same feature as the customer was receiving must be entitled to the use of an existing splitter if the end-users features are to remain intact. This is especially so given the Legislature's requirement that the requesting carrier be provided the platform "without any disruption to the end user's services." The only way that this can be accomplished is if the splitter is part and parcel to the platform. Any other scheme would, of necessity, require some disruption of service.

The Staff argues that, to comply with this directive, SBC's tariff must provide for the use of existing splitters by CLECs seeking to engage in line splitting. Moreover, literal compliance requires that SBC's tariff provide for a seamless transition to line

splitting, with no service disruption whatever. It is the Staff's understanding, however, that the involved parties acknowledge that some minimal service disruption is unavoidable for purely technical reasons. Given this, Staff contends that SBC's tariff must, at an absolute minimum:

- 1) provide for use by CLECs (for line splitting purposes) of existing SBC splitters; and
- 2) provide for the most efficient processes and mechanisms feasible (consistent with safety and reliability considerations) in order to minimize any technically unavoidable service disruptions in CLEC line splitting arrangements.

The Staff's position is that SBC must demonstrate that its tariff contains provisions that adequately address these two issues immediately.

#### **b) Staff's Reply Position**

In reply to SBC, the Staff directs our attention to Paragraph 968 of our Phase I Interim Order, where we state as follows:

Our concerns with respect to the satisfaction of Checklist Item 4 are centered on certain line splitting matters discussed above and on the compliance tariff for Dockets 00-0393 and 01-0164. We expect the company to address these concerns to our satisfaction in Phase II together with a showing on resolution of the "hot cuts" issue.

The Staff further notes that compliance with our Orders in Docket 01-0614 requires that SBC Illinois' tariffs:

- a) permit appropriate cross connects between any UNE-P combination and the facilities of any collocated carrier;
- b) provide for the use by CLECs (for line splitting purposes) of existing SBC splitters; and
- c) provide for the most efficient processes and mechanisms feasible (consistent with safety and reliability considerations) in order to minimize any technically unavoidable service disruptions in CLEC line splitting arrangements.

It is the Staff's opinion that SBC Illinois witness Carol Chapman, in her March 3, 2003 rebuttal affidavit, at paragraphs 16 through 18, adequately addresses the obligations set forth in items (a) and (b) above. Ms. Chapman's affidavit, avers the Staff, makes clear that the required and appropriate provisions indeed are present in SBC Illinois' tariff. In the Staff's opinion, these issues are resolved for purposes of this docket. Accordingly, the Staff recommends that the Commission find that SBC

complies with these two particular Docket No. 01-0614 requirements.

However, with respect to item (c) of paragraph 18 (above), SBC Illinois has not, in the Staff's estimation, demonstrated that its tariff provides for:

the most efficient processes and mechanisms feasible (consistent with safety and reliability considerations) in order to minimize any technically unavoidable service disruptions in CLEC line splitting arrangements.

Staff draws our attention to how Ms. Chapman addressed this issue in response to questions posed during the Phase II transcribed meeting on February 10, 2003, and specifically to the following exchange:

Q. I think you also discuss -- maybe you don't discuss this. But in converting UNE-P to line splitting from, again, a network facility standpoint, what's happening in the central office, what works going on, you'd agree with me that putting aside what carriers doing what, the work that's done is identical to work SBC would do when provisioning SBC branded DSL to its own voice customers?

That is you take the loop to your data affiliate's cage and then cross-connect the voice portion of the loop back to the SBC switch?

A. That is correct.

Q. And you would think that the downtime, the average downtime in provisioning line -- UNE-P line splitting or line sharing to your own voice customers using your -- the SBC data affiliate, that the customer downtime on voice should be identical?

A. Yes, it should be equivalent. That's been our practice is to make sure that we handle it the same way.

Tr. at 2642-43

It is the Staff's opinion that Ms. Chapman thus makes clear that SBC recognizes that any technically unavoidable downtime should be equivalent (on average) between line splitting arrangements and SBC's own line sharing arrangements with its data affiliate (i.e., nondiscrimination). She further recognizes that from an operational and performance perspective this equivalency can and should, on average, be achieved. SBC Illinois now simply should demonstrate in its surrebuttal filings that its tariff contains language directly addressing this comparability (in a manner consistent with Ms. Chapman's above response), or add such language to its tariff. If SBC fails to take either action to the our satisfaction, the Staff recommends that we should not find SBC Illinois in compliance with our Docket 01-0614 Orders. In that event, Staff recommends that we decline to endorse SBC Illinois' Section 271 application.



### **c) Commission Analysis And Conclusion**

We determined in our Phase 1 Interim Order that SBC Illinois must demonstrate that its tariff complies fully with our Orders in Docket No. 01-0614. It is clear from the showing made in Phase II that SBC Illinois has not yet satisfied this requirement.

The Staff has proposed, in Staff Exhibit 40.0, that SBC should file tariff revisions that provide for the most efficient processes and mechanisms feasible (consistent with safety and reliability considerations) in order to minimize any technically unavoidable service disruptions in CLEC line splitting arrangements. We find that Staff's proposal would bring SBC Illinois' tariff into full compliance with our Orders in Docket No. 01-0614. Accordingly, we hereby direct SBC Illinois to file tariff revisions that make precisely these modifications to its tariff. In the alternative, we are compelled to conclude that SBC Illinois has failed to satisfy this checklist item.

### **IX. Checklist Item 5 - Unbundled Local Transport**

#### **A. Performance Measurement Data Analysis**

Checklist item 5, regarding unbundled local loops, includes PMs 55 through 69, and CLEC WI 11. All worksheets are included in Schedule 29.02.

Review of the remedied Checklist Item 5 sub-measures provides the following information:

<b>Checklist Item 5</b> Summary of Performance Unbundled Local Transport				
	<b>Sept. '02</b>	<b>Oct. '02</b>	<b>Nov. '02</b>	<b>Total</b>
Number of Sub-measures Missed	0	0	0	0
Number of Sub-Measures Passed	2	2	2	2
Total Number of Sub-Measures	2	2	2	2
Percentage of Sub-Measures Passed	100%	100%	100%	100%

#### **1. Unbundled DS1 Dedicated Transport**

Based on the evidence, SBCI does not need to take any corrective actions with respect to its DS1 transport maintenance and repair service.

**a) Staff's Initial Position**

**(1) Maintenance and Repair**

Staff explained that the PMs measuring maintenance and repair performance for DS1 Dedicated Transport are PM 65-09 (Trouble Report Rate – DS1 Transport), PM 65.1-09 (Trouble Report Rate Net of Installation and Repeat Reports – DS1 Transport), PM 67-09 (Mean Time to Restore – Dispatch – DS1 Transport), PM 67-24 (Mean Time to Restore – No Dispatch – DS1 Transport), and PM 69-09 (Percent Repeat Reports – DS1 Transport). ICC Staff Ex. 32.0 at ¶ 124. These PMs indicate that the CLECs receive high quality post provision DS1 service and DS1 maintenance and repair service from the Company that is nearly perfect. *Id.*

**(2) Staff's Recommendation**

Based on the performance data submitted by the Company, Staff recommended that the Commission find that the Company is providing DS1 dedicated transport maintenance and repair service in accordance with the requirements of Section 271(c)(2)(B)(v) of the Telecommunications Act of 1996 ("1996 Act"). ICC Staff Ex. 32.0 at ¶ 125.

**2. Unbundled DS3 Dedicated Transport**

Based on the evidence, the Company does not need to take any corrective actions with respect to its DS3 transport maintenance and repair service.

It is Staff's determination that SBC Illinois' reported performance relative to checklist item 5 is satisfactory.

**a) Staff's Initial Position**

**(1) Maintenance and Repair**

Staff noted that the PMs measuring maintenance and repair performance for DS3 Dedicated Transport are PM 65-14 (Trouble Report Rate – DS3 Transport), PM 65.1-14 (Trouble Report Rate Net of Installation and Repeat Reports – DS3 Transport), PM 67-14 (Mean Time to Restore – Dispatch – DS3 Transport), PM 67-24 (Mean Time to Restore – No Dispatch – DS1 Transport), and PM 69-14 (Percent Repeat Reports – DS3 Transport). ICC Staff Ex. 32.0 at ¶ 126. These PMs indicate that the CLECs receive high quality post provision DS3 service and DS3 maintenance and repair service from the Company that is nearly perfect. *Id.*

**(2) Staff's Recommendation**

Based on the performance data submitted by the Company, Staff recommended that the Commission find that the Company is providing DS3 dedicated transport

maintenance and repair service in accordance with the requirements of Section 271(c)(2)(B)(v) of the Telecommunications Act of 1996 ("1996 Act"). ICC Staff Ex. 32.0 at ¶ 127.

## **X. Checklist Item 6 – Unbundled Local Switching**

### **A. Performance Measurement Data Analysis**

The performance results included in Ehr Attachments A and B indicate that "Illinois CLECs are not currently purchasing stand-alone unbundled local switching products from SBC Illinois."<sup>106</sup> Therefore, there is insufficient data to determine whether SBC Illinois provisioning process for stand-alone unbundled local switching is satisfactory. At the same time, there is no evidence to suggest that SBC Illinois provisioning process impairs or impedes CLECs' ability to compete using this product.

It is Staff's determination that SBC Illinois' reported performance relative to checklist item 6 is satisfactory.

## **XI. Checklist Item 7 - 911, E-911, Directory Assistance, and Operator Services**

### **A. Performance Measurement Data Analysis**

Checklist item 7, regarding 911, E-911, Directory Assistance, and Operator Services, encompasses the following performance measures: 80, 82, 102, 103, 104, 110, 111, 112, and 113. These worksheets are included in Schedule 29.02.

#### **1. 911 and E-911**

Data on PMs 102, 103, and 104, relative to 911 and e-911, indicates that SBC Illinois passed PM 102 and failed PM 104. For PM 103, there was insufficient data for all sub-measures to make a determination.

PM 102 -- Average time to clear errors during the processing of the 911 database (UNE loop and port combination orders)

#### Staff's Position

With respect to PM 102, the Staff's analysis leads it to the conclusion that the company was able to successfully clear errors in the 9-1-1 database at the parity standard in each month of the study period. Therefore, the company has satisfied PM 102.

---

<sup>106</sup> Ehr Phase II Affidavit at ¶ 188.

### PM 103 - Percent accuracy for 911 database (facilities based carriers)

#### Staff's Position

With respect to PM 103, no data was available to support any conclusion regarding whether SBC Illinois can maintain the same percentage of accuracy in the 9-1-1 database for its competitors as it has for itself. Staff sought further information regarding this lack of data from SBC witness James Ehr. Mr. Ehr, stated that the business rule for PM 103 provides that the activity that's measured is initiated by the facilities-based CLEC requesting a reconciliation file, so that the CLEC can reconcile the accuracy of the updates to the 9-1-1 database. Tr. at 3054. However, no CLEC has engaged in this process during the study period, so there is no activity to report. Accordingly, the company has, due to insufficient data, neither passed nor failed PM 103.

The Staff has reviewed the business rule and understands that the process would require the CLEC to request a compare file so as to compare its own customer record information in order to determine the validity of the Company's 9-1-1 database record. Since no CLEC has requested this information, there is no data available to determine a percentage of database accuracy.

#### **a) Problems with Key PM 104 — Average Time Required to Update 911 Database (facilities based carrier)**

SBC Illinois' reported failure on PM 104 indicates that the Company was unable to provide updates to the 9-1-1 database in the same timely fashion as was provided to itself. Updates to the 9-1-1 database must be made in a timely fashion. The longer the delay, the greater the chance that an incorrect phone number and address could be forwarded during a 9-1-1 call, thus creating a greater possibility of loss of life and property.

#### Staff's Initial Position

With respect to PM 104, it appears to the Staff that SBC Illinois was unable to meet the parity standard for average time to update the 9-1-1 database and to unlock the 9-1-1 database records. Based on information available to Staff on the company's web site, SBC's inability to achieve parity for this performance measure on a consistent basis has persisted since at least January of 2002. The longer the delay in updating the database, the greater the chance that an incorrect phone number and address could be forwarded during a 9-1-1 call, thus creating a greater possibility of loss of life or property.

In his January 17, 2003, Affidavit, Mr. Ehr stated that the difference in SBC Illinois' retail and CLEC performance was not material, amounting to a difference in average time to update the 9-1-1 data base of 14 minutes in September and 24 minutes

in November. Ehr Initial Affidavit, ¶ 192. Mr. Ehr also testified in his affidavit the “[t]he reason for any difference between the results for SBC Illinois’ retail updates and the CLEC updates can be attributed to two factors outside the control of SBC Illinois: the size of the CLEC update files and the quality of the CLEC update file records.” Ehr Initial Affidavit, ¶ 193. Mr. Ehr also testified that the industry standard for timeliness of 9-1-1 database updates established by the National Emergency Number Association (NENA) is within 24 hours of receipt, and that SBC is processing update files for both its own updates and CLEC updates within this standard. Staff sought further clarification at the hearings of SBC’s “reasons” for not achieving parity, and Mr. Ehr indicated that he would need to respond in writing to provide any information beyond what was in his affidavit. Tr. at 3056-3059. In Mr. Ehr’s Response to the 2/11/2003 Hearing Questions Directed to James Ehr, he indicated that two factors “could cause CLEC files to take longer to process on average.” Mr. Ehr’s written response further indicated that these factors were (1) that CLEC files generally contain more errors than SBC files (and errors require additional processing time) and (2) that CLECs submit nearly four times as many 911 update files as submitted by SBC (which results in a greater probability for CLECs to experience a wait situation while in the processing queue).

Staff is familiar with the NENA standard, and agrees that updates completed within the 24 hour time frame meet the national standard and adequately address public health and safety concerns. Although the average update time for SBC Illinois’ retail updates and the CLEC updates is less than the 24 hour NENA standard, it is not clear from information provided to date whether all individual updates meet this standard. It is also not clear why the larger number of CLEC updates would cause CLECs to experience greater average update times. The Staff avers that we need to ensure that the company’s updates to the 9-1-1 database are being made in a timely fashion for its competitors as well as for itself. The additional information specified above will assist in making such a determination.

#### Staff’s Reply position

The Staff has further analyzed SBC Illinois’ performance on PM 104 and has reviewed Mr. Ehr’s explanation regarding the factors that he claims are not within SBC Illinois’ control. The first point Mr. Ehr makes is that CLEC files have a higher percentage of errors in their files, which adds time to the processing of the CLECs file. SBC Illinois implies that, for all practical purposes, the updating times are the same, even though it took SBC Illinois 14 minutes longer in September and 24 minutes longer in November to update CLEC 911 data. Mr. Ehr also believed the 14 and 24-minute delay is minimal enough that it should not have an effect on public safety.

On its face, this might appear to be a logical assumption. However, the z value indicates that these differences are statistically significant. In this proceeding, it was determined that SBC Illinois would need to stay below a z-value of +1.645 in order to satisfy the PM. The following represents the z-values obtained in the 3-month test period and the two most current months for which data is available (received this month). The only month in the test period that SBC Illinois hit the PM by being below the +1.645 z-value was October 2002.

September 02	1.86
October 02	0.68
November 02	2.43
December 02	2.816
January 03	1.686

The Staff is uncertain why SBC believes this performance to be satisfactory, and is uncertain whether SBC Illinois has taken any steps to improve the situation. Mr. Ehr's rebuttal affidavit revealed that on average CLEC files had an 18.7% error rate in September and November 2002 versus a 7.3% error rate for SBC for the same time period. It appears that SBC Illinois can, and perhaps should, work with the CLECs to identify ways the CLECs might reduce the number of errors in their files. SBC Illinois did not provide any information as to any steps they had taken to help rectify the problem.

The second factor that supposedly contributed to SBC not being able to achieve parity for PM 104 was that CLECs provided four times more files to update than SBC, which resulted in longer average processing times. Mr. Ehr's explanation in this regard is not sufficient. The Staff believes the average delays for SBC and the CLECs should be the same, even if there are more CLEC files to update. For example, if there were 25 SBC employees and 100 CLEC employees waiting for an elevator that could take 10 people at a time, I can understand how there would be delays but the average delay should be the same for both SBC and CLEC employees. The delays could only be different if (1) there were separate elevators for SBC and CLEC employees or (2) there is only one elevator but SBC is given priority on that elevator. The same holds true with respect to updating 9-1-1 files. A greater number of files may well increase processing or waiting time, but it would increase the waiting time for all participants. This should not increase the average processing time for CLECs versus SBC unless SBC is somehow given priority treatment or has a separate processing queue.

In addition, Mr. Ehr believes that the time differences in processing were not significant time differences, and would not affect public safety. The assertion made by Mr. Ehr was that SBC Illinois updates every 9-1-1 file within the 24-hour standard established by the National Emergency Number Association (NENA) which should satisfy this performance measurement.

The Staff finds it reassuring that SBC Illinois is meeting the national industry standards. However, these standards are not the agreed upon measurement to be used in this proceeding. The parity standard was set to determine whether SBC Illinois is providing CLECs services in a non-discriminatory manner. The national industry standards will not illustrate whether SBC is providing the same level of service in updating the 9-1-1 database for CLECs that it provides for itself.

Additionally, PM 104 has been in place for at least 2 years and SBC Illinois has had two opportunities to change this measure in the 6-month review collaboratives.

Staff does not understand why this was never addressed by SBC given its current position.

Finally, the Staff has reviewed the results for PM 104 for all 12 months (February 2002- January 2003) and SBC Illinois has demonstrated that it is capable of providing non-discriminatory service – having achieved a satisfactory z-value 4 months out of the last 12. The Staff concludes that this measure is not inherently flawed and is obviously attainable, particularly if SBC were to work with the CLECs concerning ways to minimize the errors in their files. If SBC Illinois were to initiate a process to rectify such problems in the future it could be considered a “win win” situation and would ensure the integrity of the 9-1-1 database. Not only can SBC Illinois more successfully meet this PM, it will prompt CLECs to provide more accurate data, thus ensuring the continued integrity of the 9-1-1 database.

### **b) Commission Analysis And Conclusion**

An efficient 9-1-1 emergency response system, apart from being a matter of Section 271 compliance, is vital to public safety. Moreover, the General Assembly has charged us with establishing technical standards for 9-1-1 systems. We review SBC Illinois’ compliance in light of the vital nature of this matter.

The evidence in this proceeding discloses the fact that SBC Illinois’ performance with respect to average time in updating the 9-1-1 database has been substandard during 2 out of the 3 months for which the company submitted data.

The Staff recommends that certain remedial measures be implemented. Specifically:

(1) SBC Illinois should commit to addressing the deficiency with respect to the timeliness of updating the 9-1-1 database according to the parity standard established in this proceeding.

(2) SBC Illinois should establish criteria in which Staff would have the ability to continue to monitor PM 102, 103, and 104 so that Staff can ensure that nondiscriminatory access to 9-1-1 is being provided under Checklist item 7.

We find Staff’s recommendations reasonable, and hereby direct that they be implemented.

## **2. Directory Assistance and Operator Services**

PMs relative to directory assistance and operator services (“OS/DA”) encompass PMs 80, 82, 110, 111, 112, and 113. The PM data indicates that SBCI Illinois provided service related to PMs 80, 82, 110, and 112 in excess of the standard, while service related to PMs 111 and 113 failed. Within the 6 performance measures for OS/DA, there are a total of 8 sub-measures. SBCI data reflects that the company passed 6 and failed 2 of the sub-measures.

Staff witness George Light, an engineering analyst in the Telecommunications Division of the Commission, presented testimony regarding his review, analysis and assessment of SBC Illinois performance with respect to the performance measures associated with checklist item 7, operator services and directory assistance ("OS/DA"). ICC Staff Ex. 33.0 at ¶¶ 1, 6. Mr. Light testified that the performance measures associated with checklist item 7 are PM 80 – Directory Assistance average speed of answer, PM 82 – Operator Services speed of answer, PM 110 – Percent of updates completed in DA database within 72 hours, PM 111 – Average update interval for DA database, PM 112 – Percent of DA database accuracy for manual updates and PM 113 – Percent of electronic updates that flow through the update process without manual intervention. ICC Staff Ex. 33.0 at ¶ 7. Within the 6 performance measures for OS/DA, there are a total of 8 sub-measures. Mr. Light observed that SBC's performance measure data reflects that the company passed 6 and failed 2 of these sub-measures. ICC Staff Ex. 33.0 at ¶ 11.

Mr. Light explained that the PM failures within the OS/DA area were 111-01.2 and 113, both of which are parity measures and involve the electronic transmission of data.. ICC Staff Ex. 33.0 at ¶ 12. PM 111-01.2 measures the average number of hours required to update changes submitted to the DA database. Parity failures occurred in the months of September and November 2002. Mr. Light explained that review of the data supplied in Attachment "B" to SBC witness Ehr's affidavit reflects that in the ten months preceding the September failure, data transmissions were at parity with SBC retail operations. Further, data available from SBC's "CLEC Online" website shows that this measure was at parity for December 2002. *Id.* PM 113 measures the percentage of electronic updates received that flow through the update process without the necessity of manual intervention. This measure failed to be at parity with SBC for all 3 of the months observed. As with PM 111-01.2, Mr. Light stated that his review of data from the months preceding the 3-month review period show that PM 113 was consistently met through much of 2002. However, December 2002 data from "CLEC Online" indicates that the measure failed for a fourth consecutive month. While PM 113 failed to meet SBC retail parity, Mr. Light testified that it is important to note that the 3-month average percentage for CLEC electronic updates was 98.2%, compared to the SBC parity level of 99.5%. *Id.*

Mr. Light concluded that SBC met retail parity for all but two of the sub-measures. See ICC Staff Ex. 33.0 at ¶ 17. Looking beyond the 3-month review period, Mr. Light's analysis of the 12-month data showed that SBC consistently met or exceeded retail parity throughout most of 2002. *Id.* Mr. Light also observed that the instances of failure typically placed CLEC processing within 1% of SBC operations. Accordingly, based on all the data reviewed and assuming such data is accurate, it was Mr. Light's opinion that SBC Illinois provides adequate and nondiscriminatory services to CLECs in the area of OS/DA. ICC Staff Ex. 33.0 at ¶ 18.



### **3. Staff Recommendation for Checklist Item 7 PM Data**

It is Staff's view that SBC Illinois' reported performance relative to checklist item 7 is unsatisfactory. Staff considers any failure relative to 911 service unacceptable, and is concerned about SBC Illinois' inability to update its directory assistance database.

Staff believes that SBC Illinois has the ability to meet this PM and has demonstrated this in the past. SBC Illinois has not adequately explained how it is meeting the parity standard for PM 104 and cannot verify that it is providing non-discriminatory access to CLECs. Although meeting the NENA standards (by processing updates to the 9-1-1 database within 24 hours) addresses my public safety concerns, it does not indicate whether SBC Illinois is providing non-discriminatory access to 9-1-1. Therefore, in Staff's opinion, SBC Illinois has failed to demonstrate that it is providing non-discriminatory access to 9-1-1 services.

If the Commission does not find that SBC Illinois has failed to demonstrate that it is providing non-discriminatory access to 9-1-1 services, then Staff recommends – in the alternative – that the Commission require one of the following as a condition to any determination that SBC Illinois is providing non-discriminatory access to 9-1-1 services:

(1) SBC Illinois should present a reasonable plan to address its failure to consistently update CLEC 9-1-1 database files at the parity standard currently established, and commit to implement that plan in a timely manner; or

(2) If the Commission does not find that SBC Illinois should be required to achieve parity under the current performance measure standard for Section 271 purposes, then SBC Illinois should present an alternative standard for the updating of 9-1-1 database files and commit to adopt such measure and standard as an additional performance measure and standard pending the next six month collaborative. If we accept SBC's position that it should not be held to the existing standard, then a reasonable and workable standard is required so that timely updating of 9-1-1 database files on a non-discriminatory basis that we can monitor.

## **XII. Checklist Item 8 – White Pages Directory**

### **A. Performance Measurement Data Analysis**

Checklist item 8, regarding white pages directory, encompasses the following performance measure: PM CLEC WI-4. This worksheet is provided in Schedule 29.02.

There was insufficient data available during the 3-month review period to provide any measurable result for this performance measure.

Staff witness George Light, an engineering analyst in the Telecommunications Division of the Commission, presented testimony regarding his review, analysis and assessment of SBC Illinois performance with respect to the performance measures associated with checklist item 8, white pages listings. ICC Staff Ex. 33.0 at ¶¶ 1, 6. For checklist item 8 there is one performance measure, PM CLECW14, that measures the

accuracy of processing CLEC corrections based on the review of the directory. *Id.* at ¶ 8, 13. Specifically, this measure looks at the accuracy of SBC's correction of errors found by CLECs after a final review of the white pages directory, prior to publication. Mr. Light observed that, unfortunately, there was insufficient data available during the 3-month review period to provide any measurable result for this performance measure. *Id.* at ¶ 13. In his phase one direct testimony, Mr. Light concluded that based on the data and testimony provided by the company, SBC appeared to be in compliance with the requirements of checklist item 8. Mr. Light's opinion was unchanged in phase two, given the absence of measurable performance data coupled with the lack of specific complaints regarding SBC Illinois' white page listings. Thus, Staff's opinion is that SBC Illinois provides adequate service to competing carriers in the area of white pages directory listings.

It is Staff's determination that SBC Illinois' reported performance relative to checklist item 8 is satisfactory.

### **XIII. Checklist Item 9 - Access to Telephone Numbers**

#### **A. Performance Measurement Data Analysis**

Checklist item 9, regarding access to telephone numbers, encompasses the following performance measures: PMs 117, 118, and 119. These worksheets are included in Schedule 29.02.

PM 117 measures the percent of NXX codes loaded and tested prior to the Local Exchange Routing Guide ("LERG") effective date. PM 118 measures average delay days for loading and testing, and PM 119 measures the mean time to repair a problem associated with the loading of a new NXX code. For all 3 months the official PM result for all three measures is "n/a".

Staff witness George Light, an engineering analyst in the Telecommunications Division of the Commission, presented testimony regarding his review, analysis and assessment of SBC Illinois performance with respect to the performance measures associated with checklist item 9, non discriminatory access to telephone numbers for assignment to other carriers. ICC Staff Ex. 33.0 at ¶¶ 1, 6. Mr. Light testified that Checklist item 9 has 3 corresponding performance measures, all measured based on parity. PM 117 measures the percent of NXXs loaded and tested prior to the LERG effective date, PM 118 measures the average number of delay days for NXX loading and testing, and PM 119 measures the mean time to repair a problem associated with the loading of a new NXX code. *Id.* at ¶ 9, 14. Mr. Light observed that for all 3 months the official PM result for all three measures is "n/a", and review of the 12 months of data also produces zero measurable result. However, Mr. Light also testified that this is due to the nature of the performance measure. *Id.* at ¶ 14. When a CLEC (or any carrier) receives a new NXX code from the numbering administrator, all SBC switches must be loaded with the information, so that calls from the SBC switch to the new NXX can be properly routed. However, the "parity" measure addresses SBC loading new NXXs assigned to SBC. As an established incumbent LEC, the incidence of SBC receiving a

new NXX assignment occurs very infrequently, and likely never in a given month would there be 10 new SBC-assigned NXXs to satisfy the minimum requirement to produce a usable measure. *Id.*

Mr. Light also observed that the PM data does reflect that there were numerous CLEC NXXs loaded by SBC. *Id.* at ¶ 15. During the measurement months of September through November 2002, there were a total of 68 NXXs loaded, and all were loaded and tested prior to the requisite LERG effective date. Because this date was met in 100% of the cases, there were no “average delay days” to measure (PM 118). During the same 3-month period, there were 3 CLEC trouble reports received related to NXX loading and testing. For October, the average CLEC repair time (PM 119) was .03 days, or roughly 45 minutes, and in November, .08 days or 2 hours. *Id.* Based on his analysis described-above, Mr. Light concluded that SBC Illinois provides adequate and nondiscriminatory services to CLECs in the area of access to telephone numbers.

It is Staff’s determination that SBC Illinois’ reported performance relative to checklist item 9 is satisfactory.

#### **XIV. Checklist Item 10 – Nondiscriminatory Access to Databases and Associated Signaling Necessary For Call Routing and Completion**

##### **A. Performance Measurement Data Analysis**

No PMs were identified that addressed databases and signaling. There is no evidence indicating that SBC Illinois’ reported performance relative to checklist item 10 is unsatisfactory.

##### **1. Staff’s Initial Position**

During Phase I, RCN witness. Rahul Dedhiya testified that SBC was not providing RCN with nondiscriminatory access to SBC’s CNAM Database.<sup>1</sup> In Phase I, the Staff recommended that the two parties work together to resolve this issue<sup>2</sup>. SBC witness John Muhs’s January 22, 2003 affidavit includes correspondence from Mr. Rahul Dedhiya indicating resolution of the problem<sup>3</sup>.

##### **2. Staff’s Reply Position**

In Phase I of this proceeding, RCN asserted that it continuously experienced problems with CNAM queries and with RCN subscribers not receiving CNAM data. Other than this issue, Staff expressed no concerns that SBCI had failed to meet its obligations regarding access to the CNAM database.

The Staff points out that in our Phase I Order, we concluded that:

---

<sup>1</sup> RCN Ex. 2.0 at 2.

<sup>2</sup> Staff Ex. 16.0 at line 216 page 11.

<sup>3</sup> SBC Muhs Attachment JJM-2.

Another issue came forward in the testimony of RCN and concerns the routing of RCN's CNAM queries.

While Staff believes Ameritech Illinois to have met its burden of proof with respect to the issue raised by RCN, it favors further action by the Company. To be specific, Staff recommends that AI commit to working along with RCN to resolve the problems. The Commission agrees and accepts Staff's recommendation on the matter.

In other words, Ameritech will be found compliant with Checklist Item 10 on the condition that it reports, in Phase II, and in writing, the details of measures taken to assist in the identification and resolution of RCN's difficulties.

Phase I interim Order, ¶¶ 1303-05

SBC witness John Muhs's January 22, 2003 affidavit includes a correspondence from Mr. Rahul Dedhiya [of RCN] indicating resolution of the problem<sup>3</sup>. Staff would hope to see RCN confirm this compliance in any affidavits RCN submits in Phase 2 of this proceeding.

RCN, however, has submitted no Rebuttal Affidavits to date in this Phase II of this proceeding. Thus, Staff has no reason to conclude anything except that SBCI's representations that the matter has been resolved to RCN's satisfaction. SBCI appears to have satisfied the requirements of our Phase I Order.

## **XV. Checklist Item 11 - Number Portability**

### **A. Performance Measurement Data Analysis**

Checklist item 11, regarding number portability, encompasses the following performance measures: PMs 91, 92, 93, 95, 96, 97, 98, 99, 100, and 101. These worksheets are included in Schedule 29.02.

SBCI met or exceeded benchmarks and maintained parity-or-better levels for 9 of the 10 PMs associated with LNP. The lone measure failed was in the area of LNP.

Staff witness George Light, an engineering analyst in the Telecommunications Division of the Commission, presented testimony regarding his review, analysis and assessment of SBC Illinois performance with respect to the performance measures associated with checklist item 11, local number portability ("LNP") compliance requirements. ICC Staff Ex. 33.0 at ¶¶ 1, 6. Mr. Light testified that ten performance measures are associated with LNP (checklist item 11). *Id.* at ¶ 10. These are PM 91 – percent of LNP only due dates within industry guidelines, PM 92 – percent of time the old service provider releases the subscription prior to the expiration of the second 9-

---

<sup>3</sup> SBC Muhs Attachment JJM-2.

hours timer, PM 93 – percent of customer accounts restructured by the LNP due date, PM 95 – average response time for non-mechanized rejects returned with complete and accurate codes, PM 96 – percent premature disconnects for LNP orders, PM 97 – percent of time the company applies the 10-digit trigger prior to LNP order due date, PM 98 – percent trouble LNP in 30 days of installation, PM 99 – average delay days for the company missed due dates for stand alone LNP orders, PM 100 – average time out of service for LNP conversions, and PM 101 – percent out of service greater than 60 minutes. *Id.*

Mr. Light observed that SBC met or exceeded benchmarks and maintained parity-or-better levels for 12 of the 14 sub-measures associated with LNP. *Id.* at ¶ 16. For one measure, average response time for non-mechanized rejects – LNP with loop (PM 95-02) there was insufficient data to provide an accurate performance measure. The lone measure failed in the area of LNP was PM 92. This PM addresses when SBC provides a concurring “release” message to the Number Portability Administration Center (“NPAC”) in response to a request from a new service provider to port a customer’s telephone number. Mr. White explained that the receipt of the electronic message by the new service provider to port a number initiates the first of two 9-hour timers within the NPAC. The timers only run during an NPAC “business” day (7a.m. – 7p.m.). *Id.* During each of the two 9-hour intervals, the request to port the number remains in suspense, awaiting receipt by the NPAC of the “old” service providers’ electronic concurrence to release the telephone number. If no concurring message is received at the expiration of the second 9-hour timer, the number is ported. Failure to transmit the concurrence message does not prevent the porting of the number. It does however, cause there to be a 2-business day waiting period in order for the porting to occur. The 3-month average of port requests receiving concurrence messages prior to the expiration of the second 9-hour timer was 88.6%, significantly below the benchmark of 96.5%. *Id.*

Mr. Light observed that of the 26 sub-measures reviewed in this testimony related to four checklist items, 21 had sufficient data to provide a measurable result. *Id.* at ¶ 17. Of those 21, SBC met retail parity or exceeded the prescribed benchmark for 18 measures. *Id.* SBC Illinois failure in this instance involved a benchmark failure of the PM associated with the transmission of the “concurrence” message to NPAC is not one that adversely affects CLECs with any degree of significance. Mr. Light explained that if a CLEC generates a porting request to NPAC with sufficient lead-time to meet its customer’s due date, the absence of a concurrence message from the “old” carrier is moot. *Id.* The port occurs at the expiration of the second 9-hour timer, on the second business day after receipt. *Id.* at ¶ 17. Based on all the data reviewed, and assuming such data is accurate, it was Mr. Light’s opinion that SBC Illinois provides adequate and nondiscriminatory services to CLECs in the area of LNP. *Id.* at ¶ 18.

It is Staff’s determination that SBC Illinois’ reported performance relative to checklist item 11 is satisfactory.

## **XVI. Checklist Item 12 – Dialing Parity**

### **A. Performance Measurement Data Analysis**

No PMs were identified that addressed dialing parity. There is no evidence indicating that SBC Illinois' reported performance relative to checklist item 12 is unsatisfactory.

## **XVII. Checklist Item 13 – Reciprocal Compensation**

### **A. Performance Measurement Data Analysis**

No PMs were identified that addressed reciprocal compensation. There is no evidence indicating that SBC Illinois' reported performance relative to checklist item 13 is unsatisfactory.

## **XVIII. Checklist Item 14 – Resale**

### **A. Performance Measurement Data Analysis**

Checklist item 14, regarding resale, encompasses the following performance measures: PMs 27, 28, 29, 30, 31, 32, 33, 35, 37, 37.1, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54, and 54.1. Since the checklist item focuses on resale activities, this review excludes UNE loop and port combinations where applicable. These worksheets are included in Schedule 29.02.

Out of 156 resale sub-measures, SBC Illinois passed 92 sub-measures and failed 7 sub-measures. There were 57 sub-measures with insufficient data. Accordingly, of resale sub-measures with sufficient data to make a determination, SBC Illinois passed 92 out of 99, for a 93% pass rate.

SBCI continues to provide sub-measure 37-1 at a rate of 50%, therefore SBC Illinois provide PM 37 in a discriminatory manner. Data reported by SBC Illinois indicates that there is a statistically higher number of trouble reports for SBC Illinois facilities provisioned to CLEC customers than there are numbers of trouble reports from SBC Illinois customers for POTS residential (PM 37-1).

SBC Illinois' performance relative to checklist item 14 is unsatisfactory, based primarily on the Company's performance on PM 37 - Trouble Report Rate.

**1. Resolution of Problems with Key PM 29 – Percent of N, T, and C Orders Where Installation Was Not Completed as a Result of Company Caused Missed Due Date.**

This PM failure focuses on the Company's efforts relative to the sub-measure 29-7 for UNE-P, business fieldwork. SBCI objects to the contextual totality of this failure on two ground, that Staff rigidly assigned this failure even though three other sub-measures were passed, and that sub-measure has a relatively low volume of transactions.<sup>107</sup>

Staff responds that its analysis was not inappropriately rigid, since Staff was focused on SBCI's failure to meet its standard on a consistent basis over the past twelve months. However, a closer look at the most recent few months now reports that SBC Illinois passed PM 29-7 for both December 2002 (z-factor of 1.496) and January 2003 (z-factor of 1.493). ICC Staff Ex. 41.0 ¶¶64. Given this recently improved service, the Commission agrees with Staff, and finds that PM 29 is no longer a "Key PM's Requiring Improvement".

**2. Resolution of Problems with Key PM 35 – Percent Trouble Reports within 30 Days of Installation**

The Company's has provided sufficient evidence to demonstrate that it provides sub-measure 35-7 for UNE-P, business fieldwork, in a non-discriminatory manner. SBCI objects to the contextual totality of this failure on two grounds, that Staff rigidly assigned this failure even though three other sub-measures were passed, and that this sub-measure has relatively low transaction volumes.<sup>108</sup>

66. These explanations, by themselves, are not persuasive enough to warrants a pass on this PM. However, the most recent data posted by SBCI provides a pattern of SBCI providing this sub-PM in a non-discriminatory manner. The information posted by SBC Illinois to CLEC Online on March 4, 2003 indicates that SBC Illinois passed this sub-measure for both December 2002 (z-factor of 0.329) and January 2003 (z-factor of -1.033). Given the recent system improvements made by SBCI, as well as the recently improved service, the Commission agrees with Staff, that PM 35 is no longer a "Key PM's Requiring Improvement".

**3. Problems with Key PM 37—Number of Trouble Reports per 100 Lines**

SBC Illinois has exhibited significant problems with trouble reports, as reflected in PMs 37-1, 54-4, 54-6, and 54.1-4. SBCI affiant Ehr indicates that the problems associated with PMs 54-4 and 54.1-4 are related more to "disparate sample sizes" than to SBC Illinois performance problems. Ehr Affidavit, ¶212. Presumably, this same reasoning applies to sub-measure 54-6, although SBCI is silent on that sub-PM.

---

<sup>107</sup> Ehr Rebuttal Affidavit, paragraph 67.

<sup>108</sup> *Ibid*, paragraph 69.

However, this rationale does not explain the problems SBCI has been experiencing with respect to PM 37-1, since this PM reflects service quality to all residential plain old telephone service ("POTS") customers. It is also a PM in which SBC Illinois has successfully met the standard in previous months – specifically, April 2002 through September 2002. Inexplicably, SBC Illinois failed this sub-measure in October and November 2002. Trouble reports can be very problematic to a CLEC, since it means that their customer is either out of service or is having some problem with the line such as noise. In either circumstance, it is possible that customers will begin to notice that they experience more problems when they are customers of a CLEC, even though SBC Illinois is the entity responsible for the problem. ICC Staff Ex. 39.0 ¶¶95. On cross, Mr. Ehr indicated that he had people working on this PM, and would get Staff a response in writing. Tr. at 3012.

As of March 4, 2003, information posted by SBC Illinois to CLEC Online indicates that SBC Illinois' performance for sub-measures 37-1 -- trouble report rate for POTS Residential, and 37-4, regarding trouble report rate for UNE-P Business, failed in December 2002. Sub-measure 37-1 passed in December 2002 (z-factor of -0.071) but failed rather dramatically in January 2003 (z-factor of 12.747), and sub-measure failed in December 2002 (z-factor of 5.705) but passed in January 2003 (z-factor of 1.226). ICC Staff Ex. 41.0 ¶¶94-5. SBCI states that system improvements to address the issue are in the process of being made, however, significant failures persist. Since SBCI is unable to provide this PM in general conformance with its standard, SBC Illinois fails to provide PM 37 in a non-discriminatory manner. It also remains on Staff's "Key PM's Requiring Improvement" table.

#### **4. Commission Analysis And Conclusion**

The record in this proceeding demonstrates that SBC Illinois failed PM 37-1, which measures service quality to all residential plain old telephone service ("POTS") customers. This measure is one for which SBC Illinois has successfully met the standard in previous months – specifically, April 2002 through September 2002. Inexplicably, SBC Illinois failed this sub-measure in October and November 2002.

Residential service quality is a matter that we consider vitally important, as evidenced by our recent Alternative Regulation Review order, in which we imposed markedly more stringent sanctions upon SBC Illinois in the event that it provides deficient service quality to end users. We see no compelling reason to permit defective service quality to CLEC customers. As of March 4, 2003, information posted by SBC Illinois to CLEC Online indicates that SBC Illinois' performance for sub-measures 37-1 -- trouble report rate for POTS Residential, and 37-4, regarding trouble report rate for UNE-P Business, failed in December 2002. SBCI states that system improvements to address the issue are in the process of being made, however, significant failures persist. Since SBCI is unable to provide this PM in general conformance with its standard, SBC Illinois fails to provide PM 37 in a non-discriminatory manner.

Accordingly, we will adopt the Staff's recommendation, and require the company to correct the problems it has with trouble reports for CLEC POTS customers.



Moreover we direct the company to explain why these problems are occurring, and demonstrate that proper steps have been taken to ensure that these problems are corrected and will not recur on a going forward basis.

## **XIX. Review of Performance Reporting and Enforcement Mechanisms**

### **A. Summary of Staff's Position**

Staff recommends that the Commission adopt the Commission-ordered remedy plan for 271 purposes since the Commission-ordered remedy plan is self executing, properly sanctions poor performance and prevents future backsliding by SBCI in Illinois. In the alternative, Staff proposes that the Commission adopt the its Hybrid plan for 271 purposes since the Hybrid plan incorporates many of the desirable features of the Commission-ordered remedy plan, and incorporates two features from the SBCI-proposed remedy plan, but with somewhat lower remedy amounts for certain Tier 1 and Tier 2 measures. . Regardless of the Commission's determination regarding those two plans, Staff recommends that the Commission find (1) that the SBCI-proposed remedy plan fails to effectively detect and sanction poor performance when it occurs, in that the plan does not have a reasonable structure, designed to detect and sanction poor performance; (2) that the SBCI-proposed remedy plan incorporates changes to the structure of the Commission-ordered remedy plan, namely the introduction of the index value and the removal of priority weights for PMs, that would introduce discriminatory behavior on the part of SBC; (3) that the SBCI-proposed remedy plan is not self-executing, in that the plan requires calculations based on assumptions and procedures not described in the plan; and (4) that the SBCI-proposed remedy plan does not provide a meaningful and significant incentive for SBCI to comply with performance standards, since it fails to place sufficient dollar amounts at risk to prevent backsliding (5) that the underlying performance measurement data cannot be trusted for purposes of computing remedies, (6) and that the regional audit procedure proposed by SBCI compromises this Commission's autonomy and authority.

Although neither part directly addressed the issue of what performance measurements and standards would be used, this issue was generally agreed upon by the parties during discussion in Phase 1 and therefore was never really an issue in this docket. It is generally understood by Staff, that SBCI, the CLECs and Staff agree that the current PMs and standards in the tariffed business rules are adequate for detecting and correcting and degradation of SBCI service in the Illinois market. Staff also anticipates that they will be updated, on an ongoing basis, through the six month collaborative process.

Regardless what plan is found to sufficiently prevent backsliding in a post-Section 271 approval environment, Staff recommends that the Commission condition a positive 271 recommendation to the FCC contingent on SBCI firm commitment to make the following changes to the way it administers remedy plans in Illinois<sup>109</sup>: (1) enter in to a

---

<sup>109</sup>

Conditioning approval of a Performance Assurance Plan is not unheard of, since Maine

proceeding 36 months from the issuance of this order to determine the need for, or to make adjustments to, performance assurance plans offered by SBCI based on market conditions (2) provide one type of mini-audit and annual audit to all CLECs(3) allow a CLEC to opt-in to any remedy plan (4) continue participating in the six month collaborative process (5); apply only one Tier 2 calculation methodology to all remedy plans and (6) agree to a Commission proceeding, to review and approve the dollar amount equivalent of 36% of SBCI's net return of local revenue. Staff notes that SBCI proposed plan has not been approved for 271 purposes in any other state. Finally, the Commission should condition any recommendation of SBCI's petition for Section 271 approval on SBCI's commitment to offer to Illinois CLECs the Commission-ordered remedy plan for the multiple reasons set forth in Staff testimony.

## **B. Scope of Review**

This proceeding was initiated by the Commission in order for it to properly discharge its role as consultant to the FCC on matter related to SBCI's compliance with Section 271 of the Telecommunications Act of 1996. As the FCC has stated in prior orders, states may create plans to be used for post-section 271 approval monitoring and enforcement, and those plans can vary in strengths and weaknesses.<sup>110</sup> New Jersey Order, ¶177; New York Order, ¶433; Texas Order, ¶423. It is presumed that each state has determined that its performance assurance plan contains sufficient performance measurements and remedies that its wholesale market from ILEC backsliding. See id. These plans are intended to discourage anti-competitive behavior on the part of the ILEC by setting damages and penalties at a level above the simple cost of doing business. New York Order ¶¶433, 435-37; Texas Order ¶423; KS/OK Order ¶273. The initiating order in this proceeding, with respect to performance assurance plans, stated:

This Commission will fully investigate the performance remedy plan to ensure that the local market remains open to competition and to guard against backsliding following 271 approval. Therefore, this proceeding is to choose the plan, or plans, that are suitable for preventing backsliding in a post-section 271 approval environment.

Initiating Order at 4.

Therefore, the issue before the Commission relating to performance assurance plans is to choose the plan, or plans, that are suitable for preventing backsliding in a post-section 271 approval environment.

Both Staff and SBCI, have submitted for review in this proceeding performance assurance plans that are intended to prevent future backsliding of SBCI's wholesale performance. The analysis provided in this docket is only for purposes of providing the Commission sufficient information to make a recommendation to the FCC on each plans

---

did such a thing. Maine Order ¶62.

<sup>110</sup>

See Pennsylvania Order, ¶¶128-129.

ability to meet the 271 performance assurance plan criteria, and not beyond that matter, since the SBCI-proposed remedy plan contains a number of changes to the Commission-ordered remedy plan that were unsupported. Staff Comments at 5.

### **C. Burden of Proof - Assurance of Future Compliance**

SBC has the burden of proof to demonstrate that the performance monitoring and enforcement mechanisms in place in Illinois will provide a strong assurance that the local market will remain open after it receives 271 approval by the FCC. See, New York Order ¶429. Essentially, SBCI must demonstrate that the local market is “fully and irreversibly open.” Id. With respect to this demonstration, the FCC has stated that it “strongly encourages state performance monitoring and post-entry enforcement, [however it has] never required BOC applicants to demonstrate that they are subject to such mechanisms as a condition of section 271 approval.” Id. The FCC has, however stated that the fact the Regional Bell Operating Company (“BOC”) will be subject to performance monitoring and enforcement mechanisms would constitute probative evidence that the BOC will continue to meet its section 271 obligations and that its entry would be consistent with the public interest.” Id. Each state and its state commission must then set in place performance monitoring and enforcement mechanisms that are reasonable and suitable for that state.

### **D. Burden of Proof – Changes to the Commission’s Approved Plan**

Because SBCI is proposing changes to a remedy plan approved by the Commission, Staff posits that the burden of proving that these changes are necessary rests with SBCI. In the initiating order Commission stated “. . . the Administrative Law Judge shall set the procedural schedule for this proceeding, consistent with the above directive, with Ameritech Illinois [SBC Illinois] bearing the burden of proof.” Initiating Order, at 4.

This is in line with the Commission’s findings in Docket 01-0120, Illinois law and Commission practice. In docket 01-0120 the Commission stated that:

We conclude, therefore, that unless otherwise directed by the Commission, the Remedy Plan adopted pursuant to this Order shall serve as the basis for the aforementioned “performance assurance plan” referenced by [SBC Illinois] for Section 271 approval purposes. The Commission does not believe it is in either its own interest or any of the parties’ interest to re-litigate the nuances of the Remedy Plan in the current Section 271 proceeding. Therefore, the Commission wishes to clarify that any future reference (in either current or prospective docket before the Commission) to a Remedy Plan in place in Illinois, either voluntarily

or pursuant to Commission Order, shall mean the Remedy Plan adopted pursuant to this Order.”

Order, Docket 01-0120 at 20.

Since the Commission-ordered remedy plan was to serve as the basis for the performance remedy plan, SBCI carries the burden of justifying the need for substantive changes to that plan. In addition, the Illinois Supreme Court has gone so far as to state “courts have **uniformly** imposed on administrative agencies the customary common-law rule that the moving party has the burden of proof.” Scott v. Dept. of Commerce and Community Affairs, 84 Ill. 2d 42, 53; 416 N.E.2d 1082 (1981) (emphasis added).

This is entirely consistent with Commission practice. In Commission proceedings, parties seeking relief must demonstrate that they are entitled to the relief sought. See Chicago and Eastern Illinois Ry. Co. v. Road Dist. No. 10, 353 Ill. 160, 166 (1933) (stating the burden is on the petitioner to show, by a preponderance of the evidence, that it is entitled to the relief sought). SBCI is the party seeking relief here, and has proposed numerous changes to the Commission-ordered remedy plan. Accordingly, SBCI bears the burden of proving that its plan meets the 271 anti-backsliding criteria.

#### **E. Key Elements of an Assurance Plan**

When performance monitoring and enforcement mechanisms are used to provide assurance that the BOC will continue to maintain market-opening performance after receiving section 271 approval from the FCC, the FCC reviews the assurance plan to see whether it is likely to perform as promised. For a performance assurance plan (PAP) to prevent future backsliding, it needs to meet certain key elements that reasonably assure a state commission, and the FCC, that the PAP is likely to provide incentives that are sufficient to foster post-entry checklist compliance.

The FCC has acknowledged that assurance plans developed at the state level may vary widely (New York ¶433) and recognized that “state commissions will continue to build on their own work and the work of other states in order for such measures and remedies to most accurately reflect actual commercial performance in the local marketplace.” Pennsylvania Plan ¶128.

A PAP that would reasonably assure that SBCI’s future performance would not backslide needs to demonstrate the following key elements or characteristics:

1. potential liability that provides a meaningful and significant incentive to comply with the designated performance standards;
2. clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance;
3. a reasonable structure that is designed to detect and sanction poor performance when it occurs;
4. a self-executing mechanism that does not leave the door open

unreasonably to litigation and appeal;

5. reasonable assurances that the reported data is accurate, through audits and data validation.

New York Order, ¶433; AR/MO Order ¶130.

Performance assurance plans typically have two components: a performance measurement plan and a performance remedy plan. The second key characteristic, above, addresses the performance measurement plan. It is Staff's understanding that all the parties agree that the current performance measurement that are reflected in the business rules (version 1.8), are acceptable, as long as they can be continually updated through the six month collaborative process. The first, third and fourth characteristics, above, were reviewed in Staff's case regarding the SBCI-proposed performance remedy plan. The final characteristic, above, was reviewed by Staff in regard to the OSS testing issues.

## **F. Performance Assurance Plans**

### Staff Position

#### **1. SBC Illinois' Remedy Plan**

The SBCI-proposed remedy Plan fails to meet the five key elements of a remedy plan that would prevent future backsliding. The SBCI plan fails to provide four of the five key elements of a remedy plan. SBC has not proven that its plan actually places \$317.1 million at risk, its plan does not have a reasonable structure that will detect and sanction poor performance, its plan is not properly self-executing, and there is no assurance that the data used to calculate remedies is accurate.

#### **a) Ability to Detect and Sanction Poor Performance**

The structural elements of a PAP need to be designed to detect and sanction poor performance when it occurs. New York Order ¶440; Massachusetts Order ¶245. The SBCI-proposed remedy plan does not contain design features that meet the FCC's criteria in this regard. In particular, the plan removes the measurement weightings that were ordered by the Commission in Docket No. 01-0120, and which have been agreed to in subsequent 6-month reviews; the SBCI-proposed remedy plan introduces an "index value" feature which serves to mask the severity of performance failures and serves to support, rather than discourage, discriminatory behavior on the part of SBCI. Further, the SBCI-proposed remedy plan introduces a "ceilings and floors" concept which is discriminatory. It is unclear whether the floors are appropriate since it is unsupported by evidence and in the absence of evidence supporting a change in standards the Commission has in previous dockets expressed a preference for wholesale service being provided at parity.

### **(1) Absence of Measurement Weightings**

Docket 01-0120 maintained a weighting of performance measures that the SBCI plan has discarded. This absence of measurement weighting results in the likelihood that SBCI will allow performance failures to persist over time, or repeated in consecutive months. A PM weighting attributes a level of importance to the service measured by a PM, and correlates that PM to the amount of Tier 1 compensation a CLEC is to receive if SBCI fails to meet that PM's standard.<sup>111</sup>

From reviewing SBCI's performance data, Staff discovered that the performance measure weightings contained in the existing performance measurement plan and the Commission-ordered remedy plan, (with its associated remedy levels) are working. As shown in ICC Staff Ex. 39, performance measures (PMs) that are rated as "high" display a low proportion of repeated failures in comparison with PMs that are rated as "low."

In removing the PM weighting system used in the Commission-ordered remedy plan, which has been supported in subsequent six-month collaboratives processes, the SBCI-proposed remedy plan removes a critical incentive for SBCI to address persistent performance failures. The SBCI plan uses a single-weight for all PMs that qualify for Tier 1 payments. Further, the dollar amounts called for in the Tier 1 table have amounts that are less than "low"-remedy amounts in the Commission-ordered remedy plan. ICC Staff Ex. 39 ¶¶41, compared to Ehr Affidavit, Attachment Z, §8.12. Given Staff's evidence regarding the effectiveness of higher per-failure remedy amounts, the remedy amounts presented in the SBCI-proposed remedy plan seem woefully inadequate. Therefore, since the SBCI plan has dollar amounts similar to the low importance PMs in the Commission-ordered remedy plan, there is a strong likelihood that under the SBCI plan, SBCI will have a high proportion of persistent failures. The potential increase in persistent failures under the SBCI remedy plan makes it less likely to detect and sanction poor performance.

The "step-up", or increase in remedy payments from month to month, operates in an uncertain manner in comparison to the Commission-ordered remedy plan. ICC Staff Ex. 39.0 ¶¶42-43. The "step-up", or escalation of Tier 1 and Tier 2 payments, occurs when SBCI fails to meet a PM standard for repetitive months (i.e. persistent failures).<sup>112</sup> In Staff Exhibit 39.0 ¶43, Staff explained that in looking at SBCI's performance under the Commission-ordered remedy plan, SBCI corrected PMs with higher weightings earlier and more consistently than PMs with low weightings. Since the SBCI-proposed remedy plan has not track record, it is uncertain how it will motivate SBCI to correct PMs that have persistent failures since the PMs are all of the same weight. ICC Staff Ex. 39.0 ¶43.

---

<sup>111</sup> Staff Ex. 39.0 at ¶¶ 37-44.

<sup>112</sup> Id. at ¶¶ 41-44.

## (2) Index Value

There are three principal reasons the index value does not detect and sanction poor performance: it introduces a real potential for discriminatory behavior; it is non-transparent and non-replicable; it reverses the escalation feature of the SBCI plan.

The index value of the SBCI plan is not designed to detect and sanction individual performance failures. The index value minimizes the importance of individual failures, and is an additional step in calculating the remedy amount, beyond simply assessing whether SBCI provisioning met or failed to meet the established standard for an individual CLEC (as is done in the Commission-ordered remedy plan). The index value requires a separate calculation of the company's "overall" performance, in the previous month, towards all CLECs. Once that index value is complete, a particular occurrence of SBCI's failure to provide service that meets the established standard could result in larger or smaller remedy calculations, because the index value then governs whether higher or lower remedy amounts should be applied.<sup>113</sup>

The way in which the index value is calculated also minimizes the importance of an individual performance failure. SBCI selects the per-occurrence, or per-measure, dollar amount based on its index value calculation, which captures the overall performance SBCI provided all CLECs in the previous month. The index value governs whether a higher or lower remedy amount is to be paid for an individual performance failure. The index value serves to take our attention away from possibly severe performance failures at the CLEC level. ICC Staff Ex. 39.0 ¶¶47-48. By focusing on some aggregate measure of "overall" performance, the SBCI-proposed remedy plan allows SBCI to provide discriminatory service, or service that does not meet the agreed to standards, to an individual CLEC. If SBCI's calculated index value is relatively higher or lower in any given month, the remedy amount for a specific PM will vary month to month, even if it has the exact volume and severity of failure in both months. Therefore, the Tier 1 payment does not really compensated the CLEC for the severity or importance of the failure, but compensates the CLEC based on SBCI's overall performance to all CLEC in the previous month. In comparison, the Commission-ordered remedy plan uses existing performance measure weights, which appear in the business rules and are reviewed by SBCI, the CLEC community, and Staff in an ongoing six-month review process, and then assigns higher or lower remedy amounts according to previously agreed-to standards that determine a measure's relative importance.

The remedy plan described in Attachment Z of Ehr's Affidavit does not accurately represent the index calculations made by SBCI in estimating the effect of their proposed remedy plan. Staff could not replicate the results SBCI provided in its affidavits. ICC Staff Ex. 39.0 ¶49. Staff was unable to replicate the index value reported by SBCI for any month of data. Staff discovered that SBCI employed a number of assumptions about the inclusion or exclusion of various performance measure results, and treatment of Tier 1 and Tier 2 results, that are not enumerated or explained in the SBCI plan, or in their affidavits. Further, SBCI applies different assumptions to PMs that require multiple

---

<sup>113</sup>

Attachment Z to Ehr Affidavit at 9; Ehr Affidavit, ¶ 326

tests (e.g., PM 2 and PM 5). These assumptions impact the calculation of the overall index value.<sup>114</sup> Since these assumptions are not explained in the SBCI plan, SBCI is not calculating remedies as described in the plan.

Even if the Staff could replicate SBCI's results, the SBCI plan is not transparent (i.e. a CLEC can easily estimate the remedy payment it is owed). ICC Staff Ex. 39.0 ¶¶50. The calculation of the index value is entirely in the hands of SBCI, and, as noted above, it can be very difficult for an outsider to replicate, since the SBCI plan has no fewer than 12 rows of potential remedy amounts, each row containing six different remedy amounts. Therefore, a CLEC needs to know how SBCI performed in relation to all CLECs in the previous month, which is information CLECs currently cannot access. Id.

The index value mitigates the step-up, or escalation features, of the SBCI plan. Both the Commission-ordered remedy plan and the SBCI-proposed remedy plan include escalation, or "step-up" features, whereby increasing Tier 1 remedy amounts are applied as per-CLEC failures persist. The escalation factor (increase in the amount SBCI would pay for each consecutive month it misses a PM) is only effective if the index value is the same for many months. As noted by SBCI, a remedy payment amount can be lowered by fluctuations in the index value. For example, a PM failure that has persisted for five months can have a lower associated remedy amount than a four-month failure by virtue of the index value improving. In practice, the SBCI plan allows SBCI to pay lower remedy amounts for persistent failures to a carrier, which would minimize the incentive for the Company to provide service that meets the established standards. Id. at ¶¶51.

In addition, SBCI caps the amount of Tier 1 payments to a CLEC at the total billed revenue the CLEC is to pay SBCI for services SBCI provides that CLEC in that month. While this cap is not a feature of the index value per se, the monthly billed revenue cap mitigates the effectiveness of the escalation, or step-up, features of the SBCI-proposed remedy plan. The impact of the billed revenue cap permits SBCI to allow service to any one CLEC to degrade, and then say, don't worry, your upcoming month's bill is "on us." As a result, remedy payments will not be reliably scaled to the severity of the failure. They might be scaled to volume of service, but a likely impact is that a CLEC's customer losses would be reflected in a reduction of future service orders. Id. at ¶¶52.

As a final point, the index value has a "Cheshire Cat" effect. That is, the remedy amounts decrease each year, as if the passage of time alone releases SBCI from its obligations to provide wholesale service that meets established standards. Table 1 of the SBCI-proposed remedy plan includes several "panels," each with a label indicating that a new set of remedy payments should be in effect with each passing year. ICC Staff Ex. 39.0 ¶¶53.

For the foregoing reasons, the SBCI plan does not effectively detect and sanction poor performance in a manner that is suitable for Illinois.

---

<sup>114</sup> SBCI responses to staff data requests MKP 12.1-12.3



### (3) “Ceilings and Floors”

The Commission should reject the “ceiling and floor” concept proposed by SBCI because it does not protect consumers, that wholesale service quality rules should set the floor for wholesale performance, and the Commission has expressed a preference for parity over the use of benchmarks. SBCI states that it proposed the floors as a compromise with CLECs so that SBCI can have a ceiling (Ehr Rebuttal Affidavit ¶224), however, even if it is a compromise it does not negate the fact that it is contrary to federal law.

The Commission directly addressed the issue of floors in Docket 01-0120. In that docket the Commission stated a preference for having

The service quality rules adopted pursuant to Section 13-712(g) should provide the floor for the service Ameritech provides to CLECs. Therefore, without a record to support a different standard and until such time as the Commission has wholesale service quality rules in place, the appropriate standard for performance measures with a retail equivalent is parity.

Order, Docket 01-0120 at 29.

Since the Commission is still addressing wholesale service quality rules, and the Commission expressed a preference for a floor being set in that context that is where it should be developed. In addition, SBCI has provided no evidence demonstrating that the floor is appropriate, as was the Commission’s concern in Docket 01-0120, or how the floor compares to the level of service consumers currently receive for those measures. Additionally, the Commission has expressed a preference for SBCI providing parity of service until this issue can be thoroughly addressed in the rulemaking.<sup>115</sup>

The “new” feature SBCI introduces in its plan is the concept of “ceilings”, which calls for no liquidated damages when performance is above the ceiling performance standard, because it is deemed to have met the performance standard regardless of the result of a parity comparison. In short, performance levels above a ceiling are not susceptible to parity requirements.

The ceilings concept is a violation of the section 251(c)(2)(C) of the Telecommunications Act of 1996, which requires incumbent local exchange carriers (e.g. SBCI) to provide CLECs interconnection with the local exchange carrier’s network

---

<sup>115</sup> In Docket 01-0120, SBCI strenuously argued against the “floor” concept stating:  
According to Ameritech, the Commission should reject the parity with a floor proposal because it would require Ameritech to provide CLECs with superior quality service, contrary to the nondiscrimination principles of the 1996 Act.  
Order, Docket 01-0120 at 26.

at al level “that is at *least equal in quality* to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.” 47 U.S.C. §251(c)(2)(C) (*emphasis added*).

The “ceilings” is in violation of §251(c)(2)(C) because it allows SBCI to provide service to itself or to any subsidiary or affiliate, at levels higher than it is providing service to CLECs, without fear of liquidated damages.

As an example, if SBC Illinois fixed out of service conditions for CLEC customers at 95% within 24 hours, but fixed out of service conditions for its own retail customers at 99% within 24 hours, a “ceiling” of 95% within 24 hours means that SBC Illinois can provide the higher level of service to its own retail customers without fear of incurring remedies. In short, the ceilings concept sanctions SBC Illinois providing discriminatory, or inferior, service to CLECs. SBC Illinois could differentiate its product from CLECs reselling SBC Illinois service, and under this remedy plan have this discriminatory impact on CLECs.

ICC Staff Ex. 29.0 ¶257.

The Commission has consistently endorsed parity as an appropriate standard<sup>116</sup>. The preference for parity has been a consistent theme from the Commission with respect to the provisioning of wholesale services. To now adopt a ceilings and floors concept would be contrary to previous ICC orders and federal law. The Commission should find that the ceilings and floors provision of Section 8.5 is discriminatory, is unsupported by evidence in this docket, and therefore reduces the SBCI plan’s ability to detect and sanction poor performance.

#### **(4) Gap Closure Proposal**

Staff supports the gap closure concept, proposed by SBCI in section 8.12 of the SBCI plan, with one exception. Section 8.12 references the “floor” concept, which Staff does not support, therefore Staff recommends that if this provision is to be used in the Hybrid Plan, or in the SBCI Plan if it is found suitable for anti-backsliding purposes, then all references to the “floor” concept should be deleted.

Section 8.12 provides for a resolution procedure between the interconnecting parties. Staff views such a procedure as being a good business practice since it allows parties to identify service problems and develop a plan to address those service problems. ICC Staff Ex. 29.0 ¶261. However, since section 8.12 also allows a gap closure process for PMs to which SBCI proposes to apply a floor, Staff recommends that language be deleted since Staff does not support the use of a floor at this time. See *infra*. Therefore, Staff proposes the following alternative language for Section 8.12:

---

<sup>116</sup>

Order, Docket 01-0120 at 30; Order, Docket 98-0555, (Merger Order) at 221.

If performance for any sub-measure fails to meet the standard of performance (parity or benchmark) defined in Appendix One for three consecutive months, SBC Illinois will, at request of the CLEC, initiate a “gap closure” effort. ~~For a measure to which a floor applies, “g”~~Gap closure” can be initiated when SBC Illinois fails to meet a performance measure standard ~~is below the floor~~ for two consecutive months. The “gap closure” effort will (1) identify the root cause for the failure to meet the performance standard, and (2) develop an action plan to improve performance to a level where it is meeting the standard of performance. Documentation of the root cause and the action plan to address it will be provided to the CLEC requesting “gap closure” within 30 days of CLEC request. If requesting CLEC assesses the action plan as inadequate, the issue will be escalated to senior management responsible for the CLEC account and the operational area(s) impacted. A response will be provided to CLEC senior management within 10 business days of receipt of the escalation from the CLEC.

ICC Staff Ex. 29.0 ¶261.

Staff’s proposal parallels SBC’s current language, in that, if there is a failure for two consecutive months the CLEC is able to request SBC Illinois to initiate a corrective action plan, so that performance is restored to level above the standard.

#### **b) Self-Executing Mechanism**

The FCC considers a remedy plan as being reasonably self-executing if it does not contain provisions that could effectively “destroy the self-executing aspect of the plan and open the door to extensive delay and litigation.”<sup>117</sup> The SBCI plan has not proven that it is sufficiently self-executing since the index value does not operate as described in the SBCI plan, the calculation of the index value cannot be easily replicated, it proposes to modify the current PMs without input from CLECs through the six month collaborative process, and the calculation of Tier 2 payments is not transparent.

It is unclear whether the SBCI plan is self-executing since the SBCI plan set forth in Attachment Z to Ehr’s Affidavit does not describe all of the steps needed to calculate remedies. Staff could not replicate the results that SBCI had provided in its affidavits. It was later determined that the reason Staff could not duplicate the results was because SBCI employed a number of assumptions about the inclusion or exclusion of various performance measure results, and treatment of Tier 1 and Tier 2 results, that are not enumerated or explained in the SBCI plan, or in their affidavits. These assumptions

---

<sup>117</sup>

New York Order ¶441.

impact the calculation of the overall index value.<sup>118</sup> Since these assumptions are not explained in the SBCI plan, SBCI is not calculating remedies as described in the plan. Furthermore, these difficulties suggest that the plan is not self executing since it appears that SBCI has not yet finished developing the remedy plan it is proposing, or cannot properly operate it at this time. ICC Staff Ex. 39.0 ¶¶61.

Additionally, even if SBCI can operate this remedy plan, the SBCI plan cannot be easily replicated. As discussed above, the SBCI plan determines the amount to be paid per failure using the index value, and the index value is based on the level of service SBCI provided all CLECs in the previous month. ICC Staff Ex. 39.0 ¶¶50, 62. Therefore, the SBCI plan is not transparent and easily audited.

The ceilings and floors concept proposed by SBCI has not been approved by CLECs through the six month collaborative process. The ceiling and floor concept sets new standards by which a CLEC is compensated. ICC Staff Ex. 29.0 ¶251. The typical procedure by which changes to a PM, such as setting a new standard, is made is through the six month collaborative process so that it reflects input from all CLECs and Staff. Finding that a plan with the ceilings and floors concept prevents backsliding would override the six month collaborative' processes function of establishing PM definitions, which Staff does not recommend. ICC Staff Ex. 39.0 ¶¶60.

Finally, the calculation of Tier 2 payments is not transparent if there are two remedy plans with Tier 2 calculation methodologies and amounts. Section 5.5 of the SBCI plan states that SBCI will make Tier 2 payments based on the Tier 2 calculation methodology that would require the greater payment. Ehr Affidavit, Attachment Z §5.5. The gives SBCI the option of choosing which plan it is to pay under, and makes it impossible for the Staff and for CLECs to double-check the amounts of Tier 2 payments it is to make. Therefore, the SBCI plan is not transparent and easily auditable, therefore leading to the potential for future litigation to resolve disputes. Staff Comments §V.D.

### **c) Total Liability at Risk**

Performance remedy plans establish payments (Tier 1 and Tier 2 payments) at a level that is sufficient to discourage anti-competitive behavior. The FCC has recognized this level as being above the simple "cost of doing business." AR/MO Order ¶130; Massachusetts Order ¶240. In most performance assurance plans approved by the FCC, a "meaningful" level of remedies to levy, on an annual basis, if performance standards are not met, is equal to or greater than 36% of net return. New York Order ¶436 - 36% ,and later raised to 39% of net return; Rhode Island Order ¶108 n.336 -- 39%; Maine Order ¶61 n. 266 -- 39%; Massachusetts Order ¶241n.769 -- 39%; AR/MO Order n.409 -- 36%; KS/OK Order ¶274 -- 36%; Texas Order ¶424 -- 36%.

The multiple structural flaws detailed above contribute to Staff's conclusion that the SBCI-proposed remedy plan does not provide a meaningful and significant incentive to comply with performance standards. These structural features seem designed to

---

<sup>118</sup> SBCI responses to staff data requests MKP 12.1-12.3

prevent the Company from ever reaching the recommended total annual remedy cap. By removing performance weightings, changing the escalation or “step-up” features, and reducing remedy amounts, the SBCI-proposed plan is expected to result in lower total remedies paid to CLECs, in Tier 1 remedies, and the state, in Tier 2 remedies than what would be paid under the Commission-ordered remedy plan. In particular, by removing performance measure weightings and their associated remedy amounts for Tier 2 measures, the SBCI-proposed remedy would fail to distinguish and effectively sanction very serious, system-affecting Tier 2 performance failures. Exh 39.0 at ¶¶67 The index value in the SBCI-proposed plan introduces an unnecessary level of complication that will result in performance failures that are sometimes accompanied by very low remedy payments, and sometimes accompanied by slightly higher remedy payments. ICC Staff Ex. 39.0 at ¶¶68.

#### **d) Data Validation and Audit Procedures**

SBC has not provided an assurance that the data used to calculate remedies is accurate. Performance remedy plans need mechanisms that allow for the review and monitoring of data, so that Staff and CLECs know that the information will be reported in a consistent and reliable manner. SBCI’s PM data is neither accurate nor reliable, and the audit mechanisms it has proposed, and currently implements through existing interconnection agreements, are inconsistent and do not allow for meaningful discovery of inaccuracies and unreliability. The reliability of reported data is critical: the PMs must generate results that are meaningful, accurate, and reproducible. In particular, the raw data underlying a PM must be stored in a secure, stable, and auditable file if we are to accord a remedy plan significant weight. Texas Order ¶¶428. Because the performance remedy plan rests entirely on the RBOCs performance as captured by the measurements, therefore the credibility of the performance data must be above suspicion. Texas Order ¶¶428. This can only be accomplished through the application of uniform mini-audit and annual audit requirements, and the Commission retaining its authority to select, prior to the commencement of an audit -- the auditor, the scope of review of the audit, and the audit plan. ICC Staff Ex. ¶¶271.

#### **(1) Data Validation**

##### Staff’s Initial Position

SBCI’s data cannot be relied upon to demonstrate future compliance. The FCC has explained that one factor it considers, as part of its public interest analysis, is whether a BOC would continue to satisfy the requirements of Section 271 after entering the long distance market.<sup>119</sup> The FCC has also stated that a BOC subject to performance monitoring and enforcement mechanisms would constitute probative evidence that the BOC will continue to meet its Section 271 obligations and that its entry

---

<sup>119</sup> KS/OK Order, ¶¶269.

would be consistent with the public interest.<sup>120</sup>

SBC Illinois' performance measurement plan and its anti-backsliding plan (a/k/a performance remedy plan) are the main components for monitoring SBC Illinois in order to ensure it continues to meet its Section 271 obligations, if approval is granted to SBC Illinois by the FCC. Both of these plans rely almost entirely on SBC Illinois' set of performance measures and the performance measurement data it reports.

In order for us to rely upon any performance measurement plan and anti-backsliding plan, we must, in Ms. Weber's estimation have confidence in the integrity and accuracy of SBC Illinois' performance measurement data that are the inputs to these plans. In its Bell Atlantic New York 271 Order, The FCC stated that one important characteristic of an anti-backsliding plan is that there must be reasonable assurances that the BOC reported performance measurement data is accurate.<sup>121</sup> Ms. Weber assures us that the efficacy of these plans is seriously undermined if the inputs are unreliable. Ms. Weber states that the facts presented in her affidavit regarding SBC Illinois' performance measurement data clearly demonstrate that the data inputs to be used in any anti-backsliding plan, are unreliable at this point in time. Therefore, until SBC Illinois has proven that its performance measurement data is accurate, Ms. Weber states that we cannot rely upon the data to demonstrate or ensure future compliance by the company.

#### Staff's Reply Position

As the DOJ stated in its comments to the FCC in the Michigan 271 proceeding, SBC's performance measurement data plays an important role both before and after Section 271 approval in ensuring that local markets are and remain open to competition, and that BOCs do not discriminate against local competitors<sup>122</sup>. The record filed in the Michigan 271 proceeding revealed that the Michigan Commission could not conclude that SBC's performance metrics reporting process has fully achieved a level of stability and dependability which will be required in the post Section 271 environment to permit continued monitoring and assurances against discriminatory behavior<sup>123</sup>. This statement by the Michigan Commission and the other interveners in the Michigan proceeding regarding SBC's performance measurement data is one factor that precluded the DOJ from supporting the Michigan application. DOJ Michigan Evaluation at 16-17.

The facts presented in Ms. Weber's initial affidavit and reply affidavit regarding SBC Illinois' performance measurement data demonstrate that the data inputs to be used in any anti-backsliding plan, are unreliable at this point in time. Therefore, until SBC Illinois can prove that its performance measurement data is accurate and reliable, she opines that we should not use the data with confidence to demonstrate or ensure

---

<sup>120</sup> See Second Louisiana Order.

<sup>121</sup> Bell Atlantic New York Order, ¶433.

<sup>122</sup> FCC Docket No. 03-16, Application by SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Michigan. Evaluation of the United States Department of Justice, February 26, 2003 at 15-16. (DOJ Michigan Evaluation).

<sup>123</sup> Michigan Public Service Commission Case No. U-12320, Opinion and Order at 22.

future Section 271 compliance by the company.

## **(2) Audits**

At this point SBCI has not proven that its PM data is accurate or reliable, and therefore should not be relied upon by this Commission until the issues above are resolved. Staff recommends that if the Commission is not going to give a negative recommendation to the FCC, then it condition its approval on SBCI addressing all deficiencies raised by BearingPoint in the metric review, and commit to successfully resolve those deficiencies by November 2003. ICC Staff Ex. 29.0 ¶270.

SBCI proposes that a CLEC can check the reliability and accuracy of data through a mini-audit (Ehr Affidavit, Attachment Z §6.5), and that state commissions can check the reliability and accuracy of data through a regional audit (*Id.* §6.6). Staff finds that both methodologies are faulty, and recommends that only one mini-audit be provided to all CLECs, and that be the mini-audit approved in Docket 01-0120 (see *supra*, Commitments by SBC Illinois, regarding mini-audits), that the regional audit be rejected in favor of an annual audit.

SBCI proposed changing the mini-audit since it is unfair and unreasonable. Ehr Surrebuttal Affidavit ¶229. This issue was addressed and resolved by the Commission in docket 01-0120. Order, Docket 01-0120 at 14,15. If SBCI wants to challenge the reasonableness of that decision it should have included that issue in its petition for rehearing, that it filed on August 9, 2002, and which was denied on August 27, 2002.

The regional audit is limited and inhibits this Commission's authority to choose an auditor. The regional audit is limited since it only allows for an audit of the PM data but not the calculation of remedy plan payments. Remedy plan payments should be audited so that Staff and CLECs know that the payment calculations are correct. SBCI states that section 6.6 incorporates an audit of remedy calculations, however, remedy calculations are different than an audit of the remedy payments. Ehr Surrebuttal ¶146. If that is what is intended, then the language of section 6.6 should be changed to accurately reflect an audit of the "calculation of remedy payments."

The regional audit does not clearly state how it will conduct a uniform five-state audit, and still provide this Commission all of the information in the format it needs. ICC Staff Ex. 39.0 ¶271. Additionally, the method proposed for choosing the auditor compromises this Commission's authority to select the auditor for this state, since SBCI proposes that the auditor be chosen by majority vote of all five states. *Id.* This Commission should be able to choose the auditor used to evaluate SBCI's performance and remedy payment calculations, and have the scope of review and audit plan approved by this Commission prior to the commencement of the audit. *Id.*

Annual audits are needed as a way to demonstrate and prove that the performance measurement data remains reliable over time. ICC Staff Ex. 29.0 ¶272.

Finally, the audit provisions should be uniformly applied to all remedy plans to permit both CLECs and the Commission to be able to analyze this data effectively. Therefore, Staff proposes that only one mini-audit, and one annual audit, respectively,

be used for all remedy plans on a going forward basis, as discussed below in the section entitled – “Commitments by SBC Illinois Regarding Operations of Remedy Plans in Illinois.”

## **2. Remedy Plan Approved in Docket 01-0120**

Staff recommends that the Commission only give a positive report to the FCC is SBCI if SBCI adopts the Commission-ordered remedy plan as the remedy plan it uses to prevent future backsliding in Illinois. In the alternative, if the Commission finds that the Commission-ordered remedy plan is punitive, then Staff proposes a Hybrid Plan be used to prevent future backsliding by SBCI. ICC Staff Ex. 39.0 ¶¶12-13, 70-71.

There are no issues in dispute regarding the Commission-ordered remedy plan, since no parties disputed that it does not meet the FCC’s five key elements of a performance assurance plan.<sup>124</sup> In fact, the basis of SBCI’s argument that the SBCI plan meets 271 requirements is that it is based on the 01-0120 plan<sup>125</sup> and that it is significantly more stringent than other plans approved by the FCC for purposes of section 271 approval<sup>126</sup>. SBCI’s only argument that the Commission-ordered remedy plan should not be used is that it is punitive. As noted in ICC Staff Exhibit 39.0, the Commission-ordered remedy plan has structural features that make it more appropriate as a performance remedy plan for Sec. 271 purposes, and, as a result, is more stringent than the SBCI plan. ICC Staff Ex. 39.0 ¶ 70.

Despite that it is uncontested that the Commission-ordered remedy plan meets the FCCs key elements of a remedy plan, Staff briefly summarizes why the Commission-ordered remedy plan meets FCCs key elements, and has requested that the ALJ take administrative notice of the record, transcripts, pleadings, notices, order and other documents incorporated in to the record of Docket 01-120 as additional support for the Commission-ordered remedy plan.

The issue before the Commission is whether the remedy plans proposed by the parties will suitably prevent backsliding in a post-Section 271 approval environment, and the Commission-ordered remedy plan is the best plan in Illinois to accomplish that.

### **a) Total Liability at Risk**

In order for a remedy plan to provide sufficient incentive for anti-backsliding purposes, the FCC has established a “meaningful” level of remedies to levy, on an

---

<sup>124</sup> In ¶72 of Staff Exhibit 39.0 Staff stated that it “does not believe that [the Commission-ordered remedy plan’s ability to satisfy the requirements of §271] are the subject of any dispute. To the extent that this assumption is incorrect, Staff will respond in its rebuttal affidavits.” SBCI never responded to this comment in its Rebuttal or Surrebuttal affidavits or Comments.

<sup>125</sup> Staff Reply Comments (Phase II) at 83-84.

<sup>126</sup> Id. at 85.



annual basis, if the parity of service standard is not met;<sup>127</sup> according to the FCC, this level would be 36% of net return.<sup>128</sup> The Commission-ordered plan employs remedy amounts that are demonstrably effective.<sup>129</sup> Further, the accounts of CLEC intervenors indicate that the remedy levels provided in the Commission-ordered plan barely compensate them for the significant costs they encounter when SBCI fails to provide service that meets the agreed-upon standards.<sup>130</sup> More important, these CLEC affiants indicate that they would greatly prefer to receive good service than remedy payments.<sup>131</sup> Finally, as noted above, Staff's review of the effectiveness of the Commission-ordered plan's remedy structure has gone un-rebutted.

SBCI incorrectly argues that the Commission-ordered remedy plan requires them to pay an amount out of proportion with the level of service they are providing. The Company dislikes the plan because it results in remedy payments that are higher than they wish to pay. The Company has demonstrated that it can comply with the Commission-ordered remedy plan. If the Company wishes to lower its remedy payments the Commission-ordered remedy plan operates as it should – it reduces payments as SBCI provides better wholesale service. ICC Staff Ex. 50.0 ¶17. Finally, the issue doesn't need to be addressed at this time, since the Illinois Appellate Court is reviewing the Order in Docket 01-0120 to determine whether the record supports the increase in Tier 1 and Tier 2 payments as ordered by the Commission.<sup>132</sup> If the amounts are not supported by fact then the Appellate Court will either resolve this issue or give the Commission guidance on how to resolve it.

The FCC has recognized that "individual state PAPs may vary in strength", and the task at hand is to determine whether the PAP at hand falls within a "zone of reasonableness" and is "likely to provide incentives that are sufficient to foster post-entry checklist compliance."<sup>133</sup> Connecticut Order ¶77. The remedy payments set in Docket 01-0120 clearly are within the zone of reasonableness. SBCI's current payments under the Commission-ordered remedy plan average approximately \$2 million per month (ICC Staff Ex. 29.0, Attachment 29.03), for 90% performance; therefore, SBCI would only pay approximately \$24 million per year, which is around 7.5% of the \$317 million annual threshold (36% of net return of local revenue). Therefore, the Commission-ordered remedy plan can't be considered too high, or even punitive, since the amount SBCI actually pays is so small in comparison to the annual threshold, which is also the amount the FCC has determined as the amount that would incent behavior (New York Order ¶¶435-36).

## **b) Performance Measurements and Standards**

As addressed above, it is Staff's position that this is not an issue since no party

---

<sup>127</sup> New York Order, ¶435.

<sup>128</sup> New York Order, ¶ 436

<sup>129</sup> ICC Staff EX. 50.0 ¶16.

<sup>130</sup> Affidavit of Forte Communications, Inc., at 3-4; Affidavit of CIMCO Communications at 3-5

<sup>131</sup> Forte Communications Affidavit at 4, CIMCO Affidavit at 7

<sup>132</sup> Ameritech Illinois Petition for Review, Docket 01-0120 at 2 (dated September 26, 2002).

<sup>133</sup> New York Order at ¶433.

raised it, and it was generally agreed upon by the parties during discussions in Phase 1 that the current PMs and standards in the tariffed business rules are adequate for detecting and correcting and degradation of SBCI service in the Illinois market. Staff has proposed above that the six month collaborative process will continue so that PMs and the business rules will be updated at periodic intervals.

### **c) Structure That Detects and Sanctions Poor Performance**

In evaluating whether a plan is sufficient for anti-backsliding purposes, the FCC considers whether the plan appears “reasonably designed to detect and sanction poor performance when it occurs.”<sup>134</sup> The Commission-ordered remedy plan includes several features that Staff finds more than adequately detect and sanction poor performance by SBCI, including:

(a) PM weightings, which attributes a level of importance to the service measured by a PM and correlates to the amount of Tier 1 compensation a CLEC is to receive if SBCI fails to meet that PM’s standard;<sup>135</sup>

(b) Effective “step-up” or escalation of Tier 1 and Tier 2 payments when SBCI fails to meet a PM standard for repetitive months (i.e. persistent failures);<sup>136</sup>

(c) Methodology for determining failures and calculating remedies that is straightforward, and transparent;<sup>137</sup>

Most important, the Commission-ordered remedy plan is designed to detect and sanction poor performance *when it occurs*. The Commission-ordered plan emphasizes the assessment of service for each CLEC, for each occurrence of service provision.<sup>138</sup> In other words, the Commission-ordered remedy plan assesses Tier 1 payments on the importance of each individual failure, and does not mask the payment based on the overall level of performance SBCI provides to all carriers, such as the SBCI plan. Therefore, the Commission-ordered remedy plan meets the FCC criteria in a manner that is superior to the SBCI-proposed remedy plan.<sup>139</sup>

### **d) Self-executing Mechanism**

In order to be considered sufficient for anti-backsliding purposes, the FCC considers whether a plan is reasonably self-executing.<sup>140</sup> SBCI has been complying with the Commission-ordered plan, as noted by Mr. Ehr during the transcribed workshops.<sup>141</sup> The Commission-ordered remedy plan meets this aspect of the FCC

---

<sup>134</sup> New York Order ¶¶440.

<sup>135</sup> Staff Ex. 39.0 at ¶¶ 37-44.

<sup>136</sup> Id. at ¶¶ 41-44.

<sup>137</sup> Id. at ¶¶45-50.

<sup>138</sup> Id. at ¶¶46-48.

<sup>139</sup> Id.

<sup>140</sup> New York Order ¶¶441.

<sup>141</sup> See Staff Ex. 39.0 at ¶¶64.

criteria since it has been in operation since September of 2002.<sup>142</sup>

#### **e) Data Validation and Audit Procedures**

The FCC seeks to determine whether the PM data is valid and whether procedures have been set in place to check the data on an ongoing basis.<sup>143</sup> In New York, the state Commission independently replicated Verizon's performance reports from raw data to determine whether the data was valid. As discussed in the Performance Measurement section of this Order, and within this Section above, Staff does not consider SBCI's to have proven that its PM data is accurate or reliable, and therefore should not be relied upon by this Commission until the issues above are resolved, and recommends it be corrected prior to giving a positive recommendation to the FCC.

However, the procedures that the Commission approved in the Commission-ordered remedy plan will ensure that the data is valid in an ongoing basis. The Commission-ordered remedy plan requires min-audits and annual audits. SBCI has been able to perform these, and no party has challenged the ability of these audit mechanisms to ensure that both performance measurement data, and the performance remedy payments will be valid on a going-forward basis.

### **3. Staff Proposed Hybrid Performance Remedy Plan**

If, in the alternative, the Commission does not require that SBCI adopt the performance remedy plan as ordered by this Commission in Docket 01-0120 for the purposes of their Section 271 application, Staff recommends that the Commission consider a series of modifications to the Commission-ordered remedy plan in Docket 01-0120 plan, described below as the "Staff Hybrid plan." These modifications incorporate some of the features proposed by SBCI, and slightly reduce the Tier 1 and 2 payments of the Commission-ordered remedy plan. In all other respects the Staff Hybrid plan retains the features of the Commission-ordered remedy plan that make it most suitable for meeting the FCC criteria. The Commission may choose this alternative if it believes remedy payments lower than those in the Commission-ordered remedy plan, coupled with adopting the "gap closure" and "step-down" table from the SBCI-proposed plan, are in the public interest.

- The Hybrid plan is based on the Commission-ordered remedy plan, with four substantial modifications. Those four modifications are as follows:
- Add the provision for the "gap closure" process, as set forth in Section 8.12 of the performance remedy plan proposed by SBCI.<sup>144</sup> This change can be accomplished by adding the language of Section 8.12 as modified

---

<sup>142</sup> *Id.* at ¶ 59-65.

<sup>143</sup> New York Order ¶442.

<sup>144</sup> Ehr Affidavit, Attachment Z at 11.

by Staff, and set forth above, and include it as a new sub-section to Section 8 of the Commission-ordered remedy plan.

- Add the provision for the “Step-Down” process and associated table, as set forth in Section 8.13 and Table 4 of the performance remedy plan proposed by SBCI.<sup>145</sup> This change can be accomplished by adding the language of Section 8.13 and the material that appears in Table 4 from the SBCI-proposed remedy plan as a new sub-section and new Table to Section 8 of the Commission-ordered remedy plan.
- Tier 1 remedy amounts: Modify the table labeled “Payment Table for Tier-1 Measures” in the existing Docket 01-0120 Plan<sup>146</sup> by reducing the amounts in the rows labeled “low” and “medium” by twenty-five percent (25%).
- Tier 2 remedy amounts: Modify the table labeled “Assessment Table For Tier-2 Measures” in the existing Docket 01-0120 Plan<sup>147</sup> by replacing the amounts in the rows labeled “Low” with the Tier 2 remedy amounts recommended in the SBCI-Proposed performance remedy plan, which are \$200 for the “per occurrence” measurements, and \$20,000 for the “per measure/cap” measurements.

Schedule 39.01 of ICC Staff Exhibit 39.0, reflects the changes suggested above to the existing Commission-ordered performance remedy plan in legislative style.

Since the Hybrid plan uses the Commission-ordered remedy plan as the starting point, it should therefore meet the five key criteria the FCC uses to determine a plan is suitable to prevent backsliding for the same reasons the Commission-ordered remedy plan meets those criteria, as set forth above, except for those elements affected by the four improvements. The only factors impacted by the changes would be the total liability at risk, whether the plan is self-executing, and whether the plan detects and sanctions poor performance.

#### **a) Total Liability at Risk**

The Hybrid plan places a sufficient amount of liability at risk. It places at risk an amount that is less than the 36% of net return, however the liability is somewhere between the Commission-ordered remedy plan and the SBCI plan as shown in Staff Ex. 39.0S. In order for a remedy plan to provide sufficient incentive for anti-backsliding purposes, the FCC has established a “meaningful” level of remedies to levy, on an annual basis, if the parity of service standard is not met;<sup>148</sup> according to the FCC, this level would be 36% of net return.<sup>149</sup> It is estimated that SBCI would pay approximately 2.1 times more under the Hybrid plan, than under the SBCI plan, and 83-85% of the

---

<sup>145</sup> Id. at 13.

<sup>146</sup> Order, Docket 01-0120 at 15.

<sup>147</sup> Id. at 16.

<sup>148</sup> New York Order, ¶435.

<sup>149</sup> New York Order, ¶436.

Commission-ordered remedy plan:

### Comparison of Remedy Plan Estimates – September-November 2002

	<b>Commission-Ordered Plan</b>	<b>Staff-Hybrid Plan</b>		<b>Corrected</b>
		With SBCI	Without SBCI	
	<b>(Docket 01-0120)</b>	Step-Down Feature	Step-Down Feature	<b>SBCI-Proposed Plan</b>
	-1	-2	-3	-4
September Tier 1	2,438,300	1,970,972	1,916,726	1,115,002
September Tier 2	707,000	707,000	707,000	151,000
<b>September Total</b>	<b>3,145,300</b>	<b>2,677,972</b>	<b>2,623,726</b>	<b>1,266,002</b>
October Tier 1	2,309,000	1,865,656	1,825,030	1,018,380
October Tier 2	637,000	637,000	637,000	142,200
<b>October Total</b>	<b>2,946,000</b>	<b>2,502,656</b>	<b>2,462,030</b>	<b>1,160,580</b>
November Tier 1	2,520,000	2,100,251	1,986,015	1,128,078
November Tier 2	561,000	560,000	560,000	114,200
November Total	<b>3,081,000</b>	<b>2,660,251</b>	<b>2,546,015</b>	<b>1,242,278</b>
<b>September-November Total</b>	<b>9,172,300</b>	<b>7,840,879</b>	<b>7,631,771</b>	<b>3,668,860</b>

ICC Staff Ex. 39.0S (citing SBC Response - MKP 17 -Attachment summarized Tier 1 and Tier 2.xls)

The Hybrid Plan, however, is not punitive, as SBCI claims. The only issue, with the Hybrid Plan, that SBCI challenges is the level of payments. Ehr Rebuttal Affidavit ¶¶234-36; Ehr Surrebuttal ¶¶131-32. As stated above, the FCC has found that 36% of net return local return is an amount that will incent an RBOC to meet its PM standards, and not backslide after 271 approval. New York Order ¶435. As argued above, since SBCI's current payments under the Commission-ordered remedy plan average approximately \$2 million per month (ICC Staff Ex. 29.0, Attachment 29.03), for 90% performance, SBCI they would only pay approximately \$24 million per year, which is considerably less than \$317 million, or 36% of its net return. Given such a low payment, the Commission-ordered remedy plan could hardly be considered punitive. Therefore, since the Hybrid plan payments are estimated to be less than the Commission-ordered plan, it also is not punitive.

## **b) Ability to Detect and Sanction Poor Performance**

The only changes that Staff proposed that would affect the plan's ability to detect and sanction poor performance are the "gap closure concept" and the "step down" concept. Both features are expected to enhance the Commission-ordered remedy plan's capability to detect and sanction performance as discussed above.

The "step down" concept allows the Tier 1 payments to be set at higher amounts when a persistent PM failure is followed by a month or more of service that meets the agreed-to standard, followed by a month of service that fails to meet the agreed-to standard. Currently, under the Commission-ordered remedy plan, if a persistent PM failure is followed by a month of service that meets the agreed-to standard, if that PM is failed again in the future, remedy levels at the "first" month, or minimum level, of performance failure are used. Using the "step-down" concept, Tier 1 payments for persistently failed PMs would be calculated using a persistent month's remedy levels even if persistent failure is interrupted by a month (or, in some cases, more) of performance that met agreed-to standards. This gives SBCI credit for addressing performance issues, as it has requested, and at the same time provides an added incentive to institute lasting corrective actions. Ehr Affidavit ¶346.

Staff supports the "gap closure" concept as modified above. The "gap closure" concept as presented in the SBCI-proposed remedy plan includes a one-sentence reference to the "floor" concept, which Staff does not support, therefore Staff recommends that it be deleted when used in the Hybrid Plan.

Section 8.12 provides for a resolution procedure between the interconnecting parties that incorporates a measure of "root-cause" analysis. Staff views such a procedure as being a good business practice since it allows parties to identify service problems and develop a plan to address those service problems. ICC Staff Ex. 29.0 ¶261. However, since section 8.12 also allows a gap closure process for PMs to which SBCI proposes to apply a floor, Staff recommends that language be deleted since Staff does not support the use of a floor at this time. See infra. Therefore, Staff proposes the following language for its use in the Hybrid Plan:

If performance for any sub-measure fails to meet the standard of performance (parity or benchmark) defined in Appendix One for three consecutive months, SBC Illinois will, at request of the CLEC, initiate a "gap closure" effort. ~~For a measure to which a floor applies, "g"~~Gap closure" can be initiated when SBC Illinois fails to meet a performance measure standard ~~is below the floor~~ for two consecutive months. The "gap closure" effort will (1) identify the root cause for the failure to meet the performance standard, and (2) develop an action plan to improve performance to a level where it is meeting the standard of performance. Documentation of the root cause and the action plan to address it will be provided to the CLEC requesting "gap closure" within 30 days of CLEC request. If requesting CLEC assesses the action plan as inadequate, the issue

will be escalated to senior management responsible for the CLEC account and the operational area(s) impacted. A response will be provided to CLEC senior management within 10 business days of receipt of the escalation from the CLEC.

ICC Staff Ex. 29.0 ¶261.

### **c) Self-Executing Mechanism**

In order to be considered sufficient for anti-backsliding purposes, the FCC considers whether a plan is reasonably self-executing.<sup>150</sup> The FCC considers a remedy plan as being reasonably self-executing if it does not contain provisions that could effectively “destroy the self-executing aspect of the plan and open the door to extensive delay and litigation.”<sup>151</sup> SBCI has been complying with the Commission-ordered plan, as noted by Mr. Ehr during the transcribed workshops.<sup>152</sup> Furthermore, Staff’s modifications are concepts proposed by SBCI, and therefore should be able to be executed by SBCI. In addition, Staff did not take issue with these concepts causing extensive delay or litigation. Therefore the Hybrid plan meets this aspect of the FCC criteria.<sup>153</sup>

## **4. 36 Month Review**

A proceeding should be initiated 36 months from the date of this Order, to determine the duration of performance assurance plan(s) offered by SBCI. At this time, there are too many variables in the telecommunications market for Staff to definitively state that SBCI’s performance and the market would be operating in such a competitive manner that a performance assurance plan(s) would no longer needed 4 years from now. Facts that could change over the next few years are the number of CLECs, the volume of business and transactions, consumer demands for new technology. ICC Staff Ex. 29.0 ¶265-67. Additionally, the FCC is contemplating further changes to the Telecommunications Act of 1996, that could greatly impact the number of CLECs and volume of transactions. Id. ¶266. Therefore, Staff recommends that a proceeding be initiated in the future to re-evaluate the performance measurement plan and performance remedy plans in relation to the level of service SBCI is providing, the level of competition in the marketplace and the volume of transactions that are being conducted to ensure that the Tier 1 and 2 payments do not become punitive or no longer provide sufficient incentive to motivate a certain level of performance by SBCI. Id. Since the aforementioned factors change over time, the proposed proceeding can make adjustments to the plans to account for changes in the market and ensure that there will be adequate incentive for SBCI’s to provide services in a manner that does

---

<sup>150</sup> New York Order ¶441.

<sup>151</sup> New York Order ¶441.

<sup>152</sup> See Staff Ex. 39.0 at ¶64.

<sup>153</sup> Id. at ¶59-65.

not backslide.

## **5. Commitments by SBCI Illinois Regarding Operations of Remedy Plans in Illinois**

Since SBCI offers a number of remedy plans to carriers in Illinois, there are certain functions related to the administration of all of these remedy plans that could adversely impact the use of remedy plans by CLECs. Staff recommends that the Commission condition its positive recommendation of SBCI's petition for Section 271 approval on SBCI's commitment to comply with the recommendations stated below so as to prevent an adverse impact on the administration of remedy plans.

Currently there are five types of remedy plans that SBCI offers to carriers in Illinois – the SBC13state plan, SBC11state plan, Commission-ordered remedy plan, Covad Plan, Texas Plan – and SBCI continues to file new plans with the Commission. See Docket 03-0098 (SBCI/TDS Metrocom filed an interconnection agreement requesting the SBCI plan become effective if the Commission-ordered remedy plan is remanded, overturned or modified by the appellate court. Therefore, another modification to the SBCI plan is concurrently being proposed by SBCI and reviewed in another docket). Remedy plans need to be self-executing and not leave the door unreasonably open to litigation and appeal. New York Order, ¶433; AR/MO Order, ¶130. SBC has included in its remedy plan certain provisions that impact the administration of all remedy plans in Illinois. These provisions should not be included in only one remedy plan, but included in, or applied to, all remedy plans. These provisions relate to audits, to modifications of performance measures on a going forward basis, to the operation of opt-in procedures for remedy plans, to the method of calculating Tier 2 payments since the performance of all carriers affect the amount of Tier 2 payments, and the calculation of the procedural annual threshold. These issues can adversely impact all plans if they are not resolved in this docket, and will ultimately result in additional future litigation.

Therefore, SBCI should commit to making the following modifications to all remedy plans operating in Illinois rather than limiting these changes to the plan or plans approved by the Commission in this proceeding.

### **a) Auditing**

Auditing provisions are provided in every type of remedy plan currently offered in Illinois, however they are not consistent among all plans. Since some of these auditing provisions provide for audits of payments paid to more than one CLEC, there should be audit provisions that are uniformly applied to all remedy plans to permit both CLECs and the Commission to be able to analyze this data effectively. Therefore, Staff proposes that only one mini-audit, and one annual audit, respectively, be used for all remedy plans on a going forward basis.



## (1) Mini-audits

Staff recommends that the Commission condition any positive recommendation of SBCI's petition for Section 271 approval on SBCI's commitment to offer the mini-audit provision set forth in the Commission-ordered remedy plan, to all CLECs. SBCI made significant substantive changes to the mini-audit provision in the Commission ordered remedy including increasing the negotiation period before an audit can be requested, from 30 days to 45 days, and reducing the number of mini-audits a CLEC can request. See underscored text in table below. These are significant changes to the Commission-ordered remedy plan's mini-audit provision, however SBCI did not provide any support justifying the changes, nor does it address the fact that there are numerous mini-audit provisions available to CLECs, as demonstrated in the Table below:

<b>SBCI plan, §6.5:</b>	<b>SBC11State plan/SBC13State plan<sup>154</sup>:</b>	<b>Commission-ordered remedy plan, §6.4.2:</b>
independent audit to resolve issues regarding accuracy or integrity of data	independent audit to resolve issues regarding accuracy and integrity of data collected, generated, and reported	mini-audit of systems, processes and procedures associated with the production and reporting of PM results, it is based on 2 months of data, using raw data, and is to be made available to CLECs
<u>CLEC and SBCI are to attempt to resolve issues for 45 days before CLEC can request audit</u>	CLEC and SBCI are to attempt to resolve issue for 30 days before CLEC granted ability to request mini-audit	CLEC and SBCI are to attempt to resolve issues for 30 days before CLEC can request a mini-audit
<u>CLEC can only request 1 audit per 4 months</u>	CLEC can only request audits for 3 measures/submeasures during the year	CLEC can only request audits for 3 single measures/submeasures during audit year
<u>CLEC cannot request the same PM to be audited more than once in 12 month period</u>	<i>NO COMPARABLE PROVISION</i>	<i>NO COMPARABLE PROVISION</i>
<i>NO COMPARABLE PROVISION</i>	Up to 3 mini-audits can be conducted simultaneously for all CLECs	<i>NO COMPARABLE PROVISION</i>

<sup>154</sup>

Information from SBC11State Plan from – Royal Phone Co. LLC/SBCI Interconnection Agreement §11; SBC13State Plan -- Teligent Services, Inc./SBCI Interconnection Agreement §12.

Audit conducted at CLEC expense, and CLEC will be reimbursed if audit affirms there is a problem	Audit conducted at CLEC expense, and CLEC will be reimbursed if audit affirms SBC materially misrepresented misreports or misrepresents data or has non-compliant procedures	payment for audit is dependent on outcome – SBC pays if it materially misrepresents or misreports data or has non-compliant procedures, and when SBCI is found non-culpable, or misfeasance is not found, then cost borne by CLEC
SBCI will inform all CLECs of any problem identified during audit via Accessible letter.	<i>NO COMPARABLE PROVISION</i>	<i>NO COMPARABLE PROVISION</i>
<i>NO COMPARABLE PROVISION</i>	<i>NO COMPARABLE PROVISION</i>	SBC to notify all CLECs of a mini-audit request

Because these changes are unsupported and because a lack of uniformity in auditing provisions has a negative impact on the Commission's ability to ensure that anti-backsliding provisions in remedy plans are properly implemented by SBCI, Staff recommends that the Commission condition any positive recommendation of SBCI's petition for Section 271 approval on SBCI's commitment to offer the mini-audit provision set forth in the Commission-ordered remedy plan, to all CLECs.

## **(2) Annual audits**

Staff proposes that the Commission condition any positive recommendation to the FCC based on SBCI commitment to conduct annual audits as approved by the Commission in Docket 01-0120. Order, Docket 01-0120 at 14, and Attachment A at § 6.4.1. Staff recommended this in Docket 01-0120 because a regularly scheduled audit is needed to “test the veracity of any numbers developed as a result of the plan.” Id. at 13. Furthermore, the Commission determined that, “having an audit only if an undefined ‘problem’ is discovered, encourages dilatory or less than forthright conduct on the part of [SBCI].” Id. at 14.

The SBCI plan removes the annual audit provision from the Commission-ordered remedy plan, but SBCI provides no rationale that justifies the provisions removal. Additionally, other remedy plans in currently effective interconnection agreements do not provide for an annual audit. The remedy plan approved in this hearing is to be used in interconnection agreements with individual CLECs. Allowing this provision in only one type of remedy plan creates confusion because it would be incorporated only in certain interconnection agreements for certain CLECs, however, the annual audit, unlike the mini-audit, is not focused on a specific CLEC. The annual audit provides the Commission and the CLECs information on how SBCI's reporting procedures and data management/handling progressed over the preceding year. Order, Docket 01-0120 at 14-15.

An annual audit provision should not be included in just one type of remedy plan, but it should apply to all remedy plans, particularly in light of the fact that an annual audit provision is not performed at the request of an individual CLEC but is performed regularly on an annual basis, in order to maintain confidence in the payments that are made, and because the annual audit provides information regarding the entire market, and not just an individual CLEC. Therefore, Staff recommends that the Commission condition its positive recommendation to the FCC based on SBCI committing to conduct annual audits as approved by the Commission in Docket 01-0120.

### **(3) Regional Audits**

Staff does not recommend approval of a regional audit as proposed by SBCI. Section 6.6 of the SBCI Plan describes a regional audit, in which it clearly states that this Commission would not be able to choose the auditor it wants, but only has the ability to vote for an auditor. The first audit won't be conducted for eighteen months after the conclusion of the KPMG Review and it is unclear how often it will be conducted subsequent to that. ICC Staff Ex. 29.0 ¶271. Furthermore, since the regional audit originates from a five state vote, it is unclear whether this Commission would have the audit conducted in the scope or manner of its choice. ICC Staff Ex. 41.0 ¶ 80. If this Commission were to approve a regional audit, the potential for this Commission to lose control over choosing who the auditor is, and potential for conflict with other states in choosing an auditor is too great. SBCI proposes that all five states should agree upon an auditor, or if unanimity cannot be reached, that the ICC submit to the auditor chosen by a majority of the five state commissions. This Commission has traditionally reserved its home-rule authority and should continue to do so. Id.

The Commission should require SBCI to perform annual audits, since that is what the Commission approved in Docket 01-0120. Further, the annual audit approved in docket 01-1020 clearly allows for auditing of both performance measures and remedy plan payments, it is conducted annually, and the Commission has control over the choice of auditor, as well as the scope of review and audit plan approved by this Commission prior to audit inception. ICC Staff Ex. 29.0, ¶271.

#### **b) Six Month Collaborative**

Staff recommends that the Commission condition any positive recommendation of SBCI's petition for Section 271 approval on SBCI's commitment to continue the six month collaborative process, as set forth in §6.3 of the Commission-ordered remedy plan, as long as wholesale PMs are in existence and are being reported. The FCC has recognized that the development of performance measures and appropriate remedies is an evolutionary process that requires changes to both measures and remedies over time. Both the Georgia and Louisiana Commissions anticipate modifications to BellSouth's service quality measures to come from their respective pending six-month reviews.<sup>155</sup> GA/LA Order, ¶294. Likewise, Staff proposes that PMs in Illinois be kept

<sup>155</sup>

The GA/LA Order at ¶294 stating that the Louisiana Commission is currently conducting

current through two methods -- continuing the six-month collaborative process, and on its own initiative after an investigation and hearing.

All of the performance remedy plans currently in effect in interconnection agreements in Illinois are based on the same 150 performance measures, or a subset thereof. Currently, the performance measurements are updated pursuant to a six month collaborative process established by the Commission in the *Merger Order*. *Order*, Docket 01-0120, Attachment A §6.3; *Order*, Docket 98-0555, Condition 30 ¶¶3, 4, 8, 9. In most circumstances it appears that the conditions in the *Merger Order* have expired, and it is unclear whether there is a mechanism in place requiring that a six-month collaborative proceeding continue, and further, there is no docket proposing or evaluating a replacement process.

Generally, SBC Illinois, the CLECs and Staff all agree that the PMs should be updated through the collaborative process, and should continue to be updated in that manner. If the PMs are not updated by collaborative, Staff would expect the parties to state otherwise in its response.

Therefore, Staff recommends that the Commission, as a condition of giving a positive recommendation to the FCC on SBCI's 271 application, should obtain a commitment from SBCI to continue meeting with CLECs and Staff, as set forth in §6.3 of the Commission-ordered remedy plan. Therefore, the six-month collaborative would be held [six months after the conclusion of the previous six month process](#), and should continue for as long as wholesale PMs are in existence and are being reported.

### **c) Applicable Remedy Plans in Illinois on a Going Forward Basis**

Staff recommends that the Commission condition any positive recommendation of SBCI's petition for Section 271 approval on SBCI's commitment to, on a going-forward basis, make available to CLECs through its interconnection agreements and opt-in procedure only those remedy plans: found suitable to prevent backsliding in this docket; and those approved for purposes of SBCI's Alternative Regulation Plan; and those developed through arms-length negotiations between a CLEC and SBC Illinois. ICC Staff Ex. 29.0 ¶240. However, those plans developed at arms-length would be subject to Commission review through the section 252 process currently in place for reviewing and approving negotiated agreements. ICC Staff Ex. 29.0 ¶240. SBC Illinois needs to commit to make such an offering so that an anti-backsliding plan/program in Illinois can be properly implemented. Performance remedy plans effectively prevent backsliding, only if all carriers, or a majority of the carriers, take of the same plan. Therefore, the more carriers who are on one plan, the more accurate the analysis performed herein, and therefore the greater the likelihood that the level of incentive this

---

a seven and one-half month detailed review of the performance measurements and penalty plan. The Georgia State Commission provided for a six month review of the plan and has ordered BellSouth to file a "root cause analysis" and a corrective action plan if BellSouth fails any sub-metric twice in any 3 consecutive months. BellSouth GALA I Reply at 86-7; Georgia Commission GALA II Comments at 3, 30; Louisiana Commission GALA II Reply at 4-5; Louisiana Commission Review; Georgia Commission GALA I Comments at 15, 217; Louisiana Commission GALA I Comments at 5.

Commission deems appropriate to prevent backsliding will be put in place. Id. ¶242.

According to SBC Illinois witness James D. Ehr, there are currently 161 CLECs purchasing wholesale service from SBC Illinois. SBC Illinois has four remedy plans available in Illinois. Following is a description of the four plans, and the number of CLECs using each remedy plan:

- 50 - 11-state/13-state plan
- 23 - CLECs have opted in to the 01-0120 plan
- 20 - Original merger remedy plan
- 1 - Covad Plan

Id. ¶236.

The remaining 67 CLECs have no remedy plan. At the end of this proceeding, Mr. Ehr indicated that it would be speculation as to how many remedy plans would be in effect due to differences in negotiations. Mr. Ehr indicated SBC Illinois anticipated that there should be one state sponsored remedy plan. Id. ¶237.

The Commission has exhibited a reluctance to interfere with the negotiation process between interconnecting telecommunications carriers in negotiated agreement dockets. Staff understands the Commission's concern about interfering with arms-length negotiations, however, in the interest of providing a uniform approach to preventing anti-backsliding of wholesale service in Illinois, Staff recommends that only one remedy plan be made available to CLECs – and that plan should be the remedy plan ordered by the Commission in Docket 01-0120. The benefit of having only one remedy plan is the uniformity of its application to all CLECs and knowledge of effectiveness in preventing backsliding. The analysis of the dollar amounts SBC Illinois would be paying is based on all carriers in Illinois taking of the same remedy plan. Ehr Affidavit ¶358. Therefore, the dollar amounts presented in this docket would not actually approximate what SBC Illinois would be paying if a number of remedy plans are allowed to remain in place. In effect, having numerous remedy plans dilutes the ability of the remedy plan or remedy plans approved in this docket to prevent future backsliding. Additionally, since all of the current remedy plans were not evaluated in this docket, we cannot determine the overall effectiveness all of the remedy plans would provide in preventing backsliding, since the remedy plans currently in effect in Illinois have different Tier 1 and Tier 2 payments. ICC Staff Ex 29.0 ¶238.

To properly evaluate an anti-backsliding plan in Illinois, we must analyze how it would actually operate in the market. SBC Illinois has not done that. SBC Illinois' affidavits do not support the notion that numerous remedy plans would be in place in Illinois, nor does it effectively tell us how much SBC Illinois would be paying if there were numerous remedy plan in effect. Mr. Ehr's affidavit only provides dollar amount calculations if every CLEC takes of a particular remedy plan, it doesn't even provide

dollar amounts it would pay based on the remedy plans currently in effect. Based on this information, the amount of remedies SBC Illinois would incur cannot be approximated. ICC Staff Ex. 29.0 ¶239.

Additionally, since one-third (67/161 carriers) of all CLECs who purchase wholesale services from SBC Illinois do not have a remedy plan, Staff recommends that SBC Illinois be required to make a commitment to notify and offer the remedy plan, or plans, determined to prevent backsliding in this docket, to those CLECs who do not have a remedy plan. Those carriers would then have the option of either amending their interconnection agreement or opting-in to those remedy plans. ICC Staff Ex. 29.0 ¶ 241.

For the foregoing reasons, SBC Illinois needs to commit to making such an offering so that an anti-backsliding plan/program in Illinois can be properly implemented. Performance remedy plans effectively prevent backsliding, only if all carriers, or a majority of the carriers, take of the same plan. The analysis performed by SBC Illinois in this docket, of the dollar amounts used to incent SBC Illinois' behavior, is based on the dollar amounts paid when all carriers would take of one plan. Therefore, the more carriers who are on one plan, the more accurate the analysis performed herein, and therefore the greater the likelihood that the level of incentive this Commission deems appropriate to prevent backsliding will be put in place.

#### **d) Opt-In**

Staff recommends that the Commission condition any positive recommendation of SBCI's petition for Section 271 approval on SBCI's commitment to modify the current opt-in procedures so that an anti-backsliding program can be effectively implemented in its region. Staff has three recommendations: (a) that the opt-in procedure be limited to a 271 approved Performance Remedy Plan, or a performance remedy plan offered under SBCI's Alternative Regulation Plan if the Commission agrees with Staff's proposal in the section above (*Applicable Remedy Plans in Illinois on a Going Forward Basis*); in the alternative, (b) if the Commission does not agree with Staff's recommendation in the preceding section, then the opt-in would apply to, but not be limited to, the 01-0120 remedy plan, the 11-State remedy plan, the 13-state remedy plan, the original merger remedy plan, or the Covad remedy plan. Staff also recommends, in this instance, that CLECs preferring to continue with their current remedy plans, such as the remedy plan developed in Docket 01-0120, should be allowed to continue with those existing remedy plans (ICC Staff Ex. 29.0 ¶244); finally, Staff recommends that SBCI notify all of the carriers who do not have a performance remedy plan in their interconnection agreement that they have the option of opting in to the remedy plans as approved in (a) or (b) above.

The opt-in procedure approved in the 01-0120 docket is unclear and needs to be clarified, the SBCI plan does not offer an opt-in procedure despite SBCI's claims, and the opt-in approved in Docket 01-0120 may no longer exist if the 01-0120 plan is no longer offered. It is unclear whether the opt-in procedure applies to only interconnection agreements effective as of the date of the 01-0120 order, or if it applies to any existing

interconnection agreement. In either case, if there is more than one remedy plan available to CLECs then they should have the option of changing plans through the opt-in procedure.

SBCI claims that §5.4 provides an opt-in procedure, however, that section applies to its Tier 1 liability, it never once mentions the term “opt-in”, and the language varies from what the Commission approved in Docket 01-0120, Attachment A §5.5. Finally, SBCI never supported the language changes it made to section 5.5 of the Commission-ordered remedy plan.

Therefore, the Commission should decide how it wants the opt-in procedure to be implemented, and that will depend on how many plans the Commission determines are appropriate to prevent SBCI’s performance from backsliding. If the Commission decides to include Staff’s recommendation in the section above (*Applicable Remedy Plans in Illinois on a Going Forward Basis*) as a condition of its positive recommendation to the FCC, and SBCI agrees, then the only remedy plans that would be made available to CLECs on a going-forward basis are: those found suitable to prevent backsliding in this docket; those approved for purposes of SBCI’s Alternative Regulation Plan; and those developed through arms-length negotiations between a CLEC and SBC Illinois. Therefore, to protect the integrity of the analysis performed in this docket, and supported by the evidence in this docket, the only remedy plans that would be available for CLECs to opt-in to are those approved in this docket as preventing backsliding, and the performance remedy plan offered under SBCI’s Alternative Regulation Plan.

However, in the alternative, if the Commission does not condition any positive recommendation to the FCC on Staff’s recommendation in the section above (*Applicable Remedy Plans in Illinois on a Going Forward Basis*) then the Commission has decided that free market forces should dictate, and that all remedy plans currently in place adequately prevent backsliding, and therefore should be available to CLECs to opt-in to. Under that rationale, Staff recommends that the opt-in apply to all whatever remedy plan is in a currently effective interconnection agreement or has been approved by the Commission. This would include, but not be limited to, the 01-0120 remedy plan, the 11-State remedy plan, the 13-state remedy plan, the original merger remedy plan, or the Covad remedy plan. Staff also recommends, in this instance, that CLECs preferring to continue with their current remedy plans, such as the remedy plan developed in Docket 01-0120, should be allowed to continue with those existing remedy plans. ICC Staff Ex. 29.0 ¶244.

Staff recommends that in all cases, the opt-in procedure set forth in the Commission ordered remedy plan in docket 01-0120 should be used, as modified below:

Any CLEC, wishing to incorporate, substitute or add a 271 approved Performance Remedy Plan, or a performance remedy plan offered under SBCI’s Alternative Regulation Plan, to its existing interconnection agreement, or a new interconnection agreement, must notify SBC Illinois and the Commission, in writing, of its intent to “opt-in” to a remedy plan. The CLECs “opt-in” becomes effective 20 days from the date of filing said

written notice with the Commission, and it supersedes the Performance Remedy Plan previously in effect for that CLEC, if any. Payments shall be calculated in accordance with the Plan beginning with the first full calendar month following the effective date of the “opt-in.” An opt-in shall be followed with an Amendment to the Interconnection Agreement filed with the Commission.

Any CLEC that adopts a remedy plan by purchasing out of a tariff, must notify SBC Illinois and the Commission, in writing, of its intent to adopt a tariffed remedy plan.

Any notice required above shall be sent to SBC Illinois’ regulatory offices and the Chief Clerk’s Office of the Illinois Commerce Commission.

ICC Staff Ex. 29.0 ¶245.

In addition, Staff provides a separate recommendation for all those carriers who do not have a performance remedy plan in their interconnection agreement. More than one-third (67/161 carriers) of all carriers who have interconnection agreements with SBCI do not currently have a remedy plan as part of that interconnection agreement. Since so many CLECs do not have remedy plans, Staff recommends that SBC Illinois make a Commitment to notify those CLECs and offer the remedy plan, or plans, determined to prevent backsliding in this docket, and offered under SBCI’s alternative regulation plan, to them. For an anti-backsliding plan to be effective, as many carriers as possible should partake from the plan. It is better to make the effort to have as many carrier incorporate a remedy plan in its interconnection agreement to ensure that backsliding performance will not occur. Those carriers would then have the option of either amending their interconnection agreement or opting-in to those remedy plans pursuant to the opt-in procedure above. ICC Staff Ex. 29.0 ¶246.

The opt-in procedure needs to be modified as proposed by Staff, and SBCI needs to commit to such an offering, so that an anti-backsliding plan/program in Illinois can be properly implemented. Performance remedy plans effectively prevent backsliding, only if all carriers, or a majority of the carriers, take of the same plan. The analysis performed in this docket, of the dollar amounts used to incent SBC Illinois’ behavior is based on the dollar amounts paid when all carriers would take of one plan. Therefore, the more carriers who are on one plan, the more accurate the analysis performed herein, and therefore the greater the likelihood that the level of incentive this Commission deems appropriate to prevent backsliding will be put in place. ICC Staff Ex. 29.0 ¶247.

#### **e) Tier 2 Payments for All Carriers**

Staff recommends that the Commission condition any positive recommendation of SBCI’s petition for Section 271 approval on SBCI’s commitment to provide only one Tier 2 calculation methodology and assessment amount table to all carriers and remedy



plans. In its SBCI plan, SBCI proposes that, if there is more than one Tier 2 calculation methodology and amounts approved by the Commission, SBCI would pay Tier 2 assessments pursuant to whichever plan would result in the highest payment.<sup>156</sup> This proposal is insufficient for four reasons: (i) SBCI is attempting to implement this proposal through one remedy plan, and it impacts all remedy plans; (ii) this proposal allows CLECs and SBCI to use Tier 2 payments as a bargaining chip in negotiating the interconnection agreement even though Tier 2 payments, as payments to the State of Illinois, are a public right, modification of which is not within the purview of any private party; (iii) this proposal allows SBCI to determine unilaterally the level of Tier 2 liability it owes the State of Illinois without, from an administrative point of view, an manageable way for Staff to double-check SBCI's payments; and, (iv) the other methods for calculating Tier 2 payments that are used in current interconnection agreements operating in Illinois (e.g., SBC11state and SBC13State plans) may be faulty. Therefore, by requiring SBCI to have only one Tier 2 calculation methodology and payment amounts for all CLECs, and all remedy plans, Staff is attempting to clarify and simplify Tier 2 administration in Illinois. SBCI is attempting to apply section 5.5 to all remedy plans without following the appropriate procedures to amend individual remedy plans. Section 5.5 states that, in the event there are two remedy plan in Illinois with a Tier 2 assessment methodology, SBCI will make pay pursuant to the methodology that would require the greater payment amount. This is inappropriate since SBCI is only proposing that this provision be included in the SBCI plan. For this provision to apply to all carriers, the current remedy plans need to be amended so that it clearly states how that remedy plan is to operate. A Tier 2 methodology set forth in one type of remedy plan, and agreed to by a couple of carriers does not bind *all* carriers to that calculation methodology, as SBCI would attempt to do in the instant case. Simple contract law would dictate that a contract agreed to by one or two parties is not binding on all third parties, without their express written agreement to those terms. The remedy plans in current interconnection agreements that lack a Tier 2 payment provision<sup>157</sup> either need to be amended to expressly state what Tier 2 calculation methodology is to be applied, or to incorporate that provision by reference, or the Tier 2 methodology must be imposed upon all remedy plans by a Commission order. Therefore, such a provision that affects the rights of various carriers cannot be set forth by SBCI in just one remedy plan. Remedy plans that do not provide for Tier 2 payments, clearly operate in a manner that is contradictory to the way the Commission intends a remedy plan to operate, since Tier 2 payments are clearly part and parcel of a complete remedy plan. See Order, Docket 01-0120, Attachment A (providing for both Tier 1 and Tier 2 payments); see Texas Remedy Plan (Ameritech Illinois Remedy Plan Proposal in

<sup>156</sup>

In section 5.5 of the SBCI plan, SBCI proposes that

To the extent that there are one or more other Commission-approved remedy plan(s) in effect that also require SBC Illinois to make Tier 2 assessments to the State, SBC Illinois will be liable for a single Tier 2 assessment for the applicable time period, which payment to the State shall be equal to either the Tier 2 assessment under such other plan(s) or the Tier 2 assessments payable under this plan, whichever is greater. Ehr Affidavit, Attachment Z §5.5.

<sup>157</sup>

The SBC11state and SBC13State remedy plans do not expressly provide that SBCI will make Tier 2 payments to the state. Tier 2 payments are only set forth in the Commission-ordered remedy plan (at §§9.0, 11.2 et seq.), and the Texas Remedy Plan (at §§9.0, 11.2 et seq.). Attachment A.

Docket 01-0120), Attachment A, §§9.0, 11.2 et seq.; see SBCI plan (Ehr Affidavit, Attachment Z, §§ 9.0, and 11.2, et seq.) .

Offering multiple Tier 2 plans to CLECs allows the CLEC and SBCI to use it as a bargaining chip. Either party could negotiate away Tier 2 payments in exchange for some benefit to themselves. For instance, CLECs could bargain to reduce SBCI's payments to the public fisc. Tier 2 payments are payments to the state which SBCI and the CLECs should not be allowed to change. Tier 2 payments represent penalty amounts that are paid to the State of Illinois for performance shortfalls that are industry-wide. The theory behind Tier 2 payments is that if the wholesale performance from SBC/Ameritech Illinois is inadequate on an industry-wide basis, remedies should be paid to provide the proper incentive to avoid such substandard performance. However, allowing the parties to negotiate changes allow them to change the amount of liability to an amount different than what the Commission has determined to be satisfactory for incenting a certain level of behavior from SBCI. Essentially, it rests complete control of how stringent a remedy plan is to be in the hands of SBCI. If SBCI thinks the plan required by the Commission is too tough, it could negotiate for a lower Tier 2 payment plan by offering the CLEC something in exchange. This would allow SBCI to completely circumvent this Commission's role and purpose in protecting the level of service quality consumers would receive.

An additional problem with SBCI's proposal in §5.5 is that it would allow SBCI to determine which Tier 2 calculation methodology would be used to calculate the Tier 2 payments for that month. Under SBCI's proposal, Staff has no manageable way of administratively verifying that the SBCI Tier 2 payments are accurate, since Staff would not know which Tier 2 calculation methodology SBCI used, nor would Staff know whether every carrier was subject to the same Tier 2 calculation methodology or even if the correct Tier 2 methodology had been applied to a carrier, since there would be multiple Tier 2 methodologies operating in Illinois. Therefore, this would inhibit Staff's ability to ensure the payments are correct, and it would not provide the incentive to SBCI that are to be approved in this docket. ICC Staff Ex. 29.0 ¶242.

Additionally, neither the Texas remedy plan's, nor the SBCI plan's, Tier 2 amounts and methodology, should be used by SBCI in calculating Tier 2 payments. The Texas remedy plan's Tier 2 amounts were found by the Commission to be insufficient to provide a "meaningful incentive [to SBCI] to provide the CLECs service that is not substandard." Order, Docket 01-0120 at 38. And the SBCI plan's Tier 2 payments and calculation methodology is not sensitive to varying levels of failed performance. ICC Staff Ex. 39 ¶55. Specifically, as SBCI performance gets worse, Tier 2 payments will not increase. Id.

If the Commission allows more than one assessment table and more than one method of calculating Tier 2 payments to be used in practice to prevent backsliding SBCI would be making payments in amounts other than what the evidence in this docket estimates they would pay. ICC Staff Ex. 29 ¶242. Therefore, in practice, the level of incentive the Commission views is appropriate to prevent SBCI's service from backsliding, would be different than what the Commission intends to order through this docket. Id.

Finally, in its Reply Comments, it appears that SBCI proposed that it would replace §§5.6 and 5.7 of its plan with §5.5 of the Commission-ordered remedy plan. SBCI Reply Comments at 89. Assuming that SBCI meant §§5.5 and 5.6 of its plan, this proposal will not work, since SBCI is proposing to replace a paragraph that addresses Tier 2 administration, §5.5 of the SBCI plan, with a paragraph that addresses “opt-in”, §5.5 of the Commission-approved remedy plan.

The Tier 2 calculation methodology that should be used for all carriers should be the one in the Commission-ordered remedy plan since that is the one currently in place, and is superior to the Tier 2 methodologies in both the SBCI plan and the Staff Hybrid Plan. See ICC Staff Ex. ¶¶55 and 57 (the Staff Hybrid Plan’s payments are less than the Commission-ordered remedy plan, therefore the incentive they provide is not as strong or effective as those in the Commission-ordered remedy plan). However, if the Commission finds the Tier 2 methodology in the Staff Hybrid Plan to be more suitable than that approved in the Commission-ordered remedy plan, then the Staff Hybrid plan’s methodology should be used before the SBCI Plan’s Tier 2 methodology and amounts. For the foregoing reasons, Staff recommends that the Commission find that only one Tier 2 calculation methodology and assessment amount table is needed to sufficiently prevent backsliding, and that SBCI should commit to applying the approved methodology and amounts to all carriers with interconnection agreements with SBCI, regardless of the remedy plan that is part of the interconnection agreement, or whether a carrier has a remedy plan in its interconnection agreement. This commitment would apply to, but not require SBCI to amend, those interconnection agreements that contain either the SBC11state or SBC13state plan.<sup>158</sup> Further, the Tier 2 calculation methodology and amounts that should be used for all carriers should be those set forth in the Commission-ordered remedy plan, and in the alternative, if that methodology is unsuitable, then the Tier 2 methodology and amounts in the Staff Hybrid Plan.

#### **f) Annual Threshold Amounts**

In section 7.4 SBC Illinois proposes that it shall determine the annual thresholds. SBCI has provided no supporting testimony for this change from the Commission-ordered remedy plan. Staff objects to this proposal, and recommends that the amount of the Annual Threshold (i.e. annual cap, in the Commission-ordered remedy plan) be determined through a Commission proceeding that would allow the Commission to evaluate the information provided by SBCI and determine the 36% annual threshold. This is consistent with the Commission-ordered remedy plan (at §7.3), which requires

The annual cap amounts will be determined by the Illinois Commerce Commission, pursuant to an annually commenced docket, based on the formula of 36% of [SBC Illinois’] net return as

---

<sup>158</sup> Staff has recommended that the Commission should approve the Tier 2 methodology and amounts set forth in the Commission-ordered remedy plan, since the SBCI plans calculation methodology is not sensitive to varying levels of performance. In the alternative, Staff proposes that the Tier 2 methodology could be the one set forth in Staff’s Hybrid plan. ICC Staff EX. 39 ¶¶57 and 74.

is set forth at ¶436 and footnote 1332 of the FCC's December 22, 1999 Memorandum Opinion and Order in CC Docket No. 99-295.

Order, Docket 01-0120, Attachment A ¶7.3.

## **6. Commission-Ordered Remedy Plan Continued as Part of SBCI's Alternative Regulation Plan**

Staff recommends that the Commission order SBCI to offer to Illinois CLECs the Commission-ordered remedy plan through its Alternative Regulation Plan. See Staff Exhibits 29.0, 39.0, 41.0 and 50.0. Moreover, the Commission-ordered remedy meets the key characteristics the FCC uses to evaluate remedy plans, it clearly is the superior plan for purposes of preventing backsliding in Illinois and remains the most complete and thorough plan available.

In Dockets 98-0252/98-0335/00-0764, the Commission determined that the remedy plan to be used for purposes of SBCI's alternative regulation is the remedy plan the Commission approved in Docket 01-0120 (i.e., the Commission-ordered Remedy Plan) stating that it is "the most thorough and complete plan at this time", and that it should continue to be offered to CLECs so as to provide "more certainty for competitors in the marketplace." Order, Docket Nos. 98-0252/98-0335/00-0764 at 190 (hereafter "Alt Reg Order"). However, the Commission also determined that "the 01-0120 Remedy Plan [would be] effective up to and until a wholesale performance measure plan for Section 271 purposes is approved by this Commission." Id. Thus, at the end of this proceeding it is conceivable that there may no longer be a Commission-approved plan, of any sort, being offered by SBCI.

Therefore, Staff recommends that the Commission should continue to require SBCI to offer the Commission-ordered remedy plan as part of its alternative regulation plan, and offer it to CLECs until the conclusion of the next proceeding that is to determine the need for and appropriate duration of remedy plans in Illinois.<sup>159</sup> There are a number of benefits to requiring SBCI to offer the Commission-ordered remedy plan through its alternative regulation plan: it will ensure that CLECs will be able to choose the superior plan available in Illinois; it will provide consistency and certainty for telecommunications companies operating in the SBCI region; it will avoid a remedy plan gap -- in which there may be a period of time in which a Commission approved plan will not be offered to CLECs; and it avoids negative repercussions in ongoing dockets wherein the remedy plan is at issue.

Requiring SBCI to offer the Commission-ordered remedy plan through its

---

<sup>159</sup> Staff has proposed that a proceeding commence in thirty-six months to reevaluate remedy plans in light of the condition of the market at that time. ICC Staff EX. 29.0 ¶268. It appears that SBCI agrees with Staff's proposal in SBCI Affiant Ehr's Rebuttal Affidavit ¶238 -- "Staff Witness McClerren proposes that a review be conducted in 36 months to "address all aspects" of the remedy plan. SBC is agreeable to entering negotiations in 36 months to discuss modifications, should it be determined that a plan is still needed beyond four years."

alternative regulation plan will also ensure that CLECs will be able to choose the superior plan available in Illinois. Moreover, Staff has provided compelling evidence in this proceeding that the SBCI plan does not prevent backsliding in Illinois for the following reasons: SBCI removed the performance weightings and has introduced an “index value” calculation which no longer allows the remedy plan to adequately detect and sanction poor performance (ICC Staff Ex. 39 ¶¶38); there are inappropriate caps on monthly payments, unlike the Commission-ordered remedy plan (ICC Staff Ex. 39 ¶52); the remedy payments are difficult for CLECs to check and replicate for itself, unlike the Commission-ordered remedy plan (ICC Staff Ex. 39 ¶¶61-62), the SBCI plan does not provide substantial incentive for the Company to provide wholesale service to CLECs in compliance with the PM standards, whereas the Commission-ordered remedy plan does (ICC Staff Ex. 39 ¶¶67-69). Therefore, the Commission-ordered remedy plan is the superior of the two plans in preventing backsliding. Furthermore, since SBCI has been offering the Commission-ordered remedy plan since August of 2002 and performance has stabilized, it is a proven commodity unlike the SBCI plan. The Commission has allowed SBCI to enter into more than one remedy plan in its interconnection agreements, and approximately 23 carriers currently operate under the Commission-ordered remedy plan. Offering the Commission-ordered remedy plan through SBCI’s alternative regulation plan gives all carriers the option of choosing the superior plan offered in Illinois.

Requiring SBCI to offer the Commission-ordered remedy plan through its alternative regulation plan will provide consistency and certainty for telecommunications companies operating in the SBCI region. If the Commission finds that the Commission-ordered remedy plan prevents backsliding, and SBCI submits a plan to the FCC for 271 approval that this Commission determines is not suitable for preventing backsliding, it is unclear whether SBCI would still need to offer the Commission-ordered remedy plan unless the Commission relies upon its authority under alternative regulation to order SBCI to offer such plan. At the outset of Phase 2, Staff counsel expressed concern about SBCI representations that it might not take to the FCC, as part of its 271 application, the remedy plan that the Commission determines as being suitable to prevent backsliding. Tr. 2175-77. In response, SBCI counsel stated that it could not commit to taking to the FCC a remedy plan that it has not seen. Tr. 2178-79.

If SBCI takes a remedy plan, other than the plan this Commission finds suitable to prevent backsliding, it is unknown what weight the FCC will give this Commission’s remedy plan findings. Additionally, if SBCI takes a remedy plan to the FCC that this Commission determined was not suitable to prevent backsliding by this Commission, and the FCC approved that application, it is unclear whether SBCI would still have to offer the Commission-ordered remedy plan, or any plan this Commission determined to suitably prevent backsliding. Therefore, so that this Commission’s can fulfill its desire to provide certainty in SBCI’s region, the Commission should order SBCI to offer the Commission-ordered remedy plan, under state authority, as part of its alternative regulation plan.

Even if the Commission finds that the SBCI plan is suitable for preventing backsliding by SBCI, the Commission should require the company to offer the Commission-ordered remedy plan as part of its alternative regulation conditions, since,

as the Commission found in the *Alt Reg Order*, it provides "certainty for competitors in the marketplace" and it will let "competitive carriers know exactly what wholesale remedial plan is available to them at all times," and is a complete and thorough plan. Order, 98-0252/98-0335/00-0764 at 190. The Commission-ordered remedy plan should continue to be made available so that those carriers who use the Commission-ordered remedy plan can still receive the benefits of that plan, and do not need to waste time, money and effort negotiating a new remedy plan.

If SBCI takes to the FCC the performance assurance plan this Commission finds acceptable in preventing backsliding but the Commission does not make it clear that SBCI is ordered to offer the plan approved in this proceeding under its alternative regulation authority, there may be circumstances that in which a gap of time could occur when the Commission approved remedy plan would not be in place in Illinois. This would occur if SBCI filed with the FCC and then withdrew the application, or if the FCC does not grant SBCI's 271 approval.

Requiring SBCI to offer the Commission-ordered remedy plan through its alternative regulation plan will avoid negative repercussions on docket 01-0539. In Docket 01-0539 the Commission is creating a rule that implements carrier-to-carrier wholesale service quality rules pursuant to Section 13-712(g) of the PUA (Proposed Part 731).<sup>160</sup> Staff's Proposed Part 731 requires all Level 1 ILECs in Illinois to have a remedy plan in place under state authority and pursuant to state guidelines. This proposed rule would require all Level 1 ILECs to have a wholesale remedy plan, including SBCI. SBCI would be considered a Level 1 carrier. The purpose of the rule is to ensure that wholesale services provided by ILECs in Illinois will be maintained at a level that provides CLECs a meaningful opportunity to compete. The instant docket, in comparison to docket 01-0539, reviews the remedy plan(s) an RBOC is to provide, and is based on federal guidelines, although the FCC recognizes that state commissions may create plans to be used for post-section 271 approval monitoring and enforcement, and those plans can vary in strengths and weaknesses.<sup>161</sup> Under the Part 731 rule Staff is currently proposing in docket 01-0539, the initial performance assurance plan that would be used for SBCI is "the most recent Pre-Rule Plan implemented by such carrier pursuant to a Commission order or, . . . the most recent Pre-Rule Plan implemented by such Carrier on a voluntary basis." Attachment B, which is Docket 01-0539, Staff Reply Brief, Attachment 1, §731.105 definition of Pre-Existing Rule sub-section b. At this time, that is the performance assurance plan approved by the Commission in Docket 01-0120. It is Staff's view that this case is not a thorough investigation of remedy plans for purposes of Part 731, for the reasons set forth in Section III above. However, if the Commission does not require SBCI to continue to offer the Commission-ordered remedy plan under SBCI's alternative regulation plan, then the plan that would be implemented for purposes of Part 731 could arguably be a remedy plan inferior to the Commission-ordered remedy plan – since Staff's affidavits demonstrates that the Commission-ordered remedy plan is superior to the SBCI plan. Therefore, the Commission should require SBCI to continue to offer the Commission-ordered remedy

---

<sup>160</sup> Reply briefs were filed, in Docket 01-0539, on October 21, 2003, and a Proposed Order is still pending.

<sup>161</sup> See Pennsylvania Order, ¶¶128-129.

plan under SBCI's alternative regulation plan. The Illinois PUA allows the Commission to set criteria for an Illinois Remedy Plan that are wholly distinct and separate from the evaluation criteria used for purposes of 271. See 220 ILCS 5/13-712. For the foregoing reasons, Staff recommends that the Commission order SBCI to offer the Commission-ordered remedy plan, to CLECs, as part of its Alternative Regulation plan, until the conclusion of the next proceeding that is to determine the need for and appropriate duration of remedy plans in Illinois.

## **7. Commission Analysis and Conclusion Regarding Performance Reporting and Enforcement Mechanisms**

The Commission agrees with Staff and finds that the Commission-ordered remedy plan is the best plan to prevent backsliding by SBCI on a going –forward basis, and we condition our positive recommendation to the FCC on SBCI proposing this plan to the FCC with its 271 application for purposes of the FCC's approval. The Commission also acknowledges that the complementary performance measurement plan is the plan currently in existence and set forth in SBCI's tariff. The Commission orders that a proceeding be commenced thirty-six months from the date of this order to re-evaluate the performance remedy plans, and performance measurement plans in light of the market at that time. This should give the market some time to develop competition. In that proceeding we seek to determine whether the PAPs are needed, and if so, should they be modified, and in what way.

The Commission finds that SBCI is to continue offering the Commission-ordered remedy plan under SBCI's alternative regulation plan until the conclusion of the next proceeding that is to determine the need for and appropriate duration of remedy plans in Illinois. We find that providing the Commission-ordered remedy plan through SBCI Alternative Regulations plan will ensure that CLECs will be able to choose the superior plan available in Illinois, it will provide consistency and certainty for telecommunications companies operating in the SBCI region, it will avoid a remedy plan gap -- in which there may be a period of time in which a Commission approved plan will not be offered to CLECs, and it avoids negative repercussions in ongoing dockets wherein the remedy plan is at issue.

In addition, the Commission finds that SBCI needs to make the following commitments to ensure that remedy plans operate in an efficient manner and to reduce potential future litigation. These Commitments need to be complied with for this Commission to have sufficient assurance that the performance reporting and enforcement mechanisms put in place for SBCI will efficiently prevent future backsliding, prevent unreasonable litigation, and improve the performance assurance plans ability to prevent backsliding. The record in this case, taken together with our analysis, reveals that these Commitments need to be agreed to, and complied with, by SBCI, in order to ensure that the PAP, in part with the remedy plans in operation in current interconnection agreements in Illinois, will adequately prevent future backsliding. We require SBCI to:

1. *Performance Remedy Plan as Part of SBCI's Interconnection Agreements:* make available to CLECs through its interconnection agreements, only those remedy plans: found suitable in this docket to prevent backsliding; and that is approved for use pursuant to SBCI's Alternative Regulation Plan; and those developed through arms-length negotiations between a CLEC and SBC Illinois. However, those plans developed at arms-length will be subject to Commission review through the section 252 process currently in place for reviewing and approving negotiated agreements.

2. *Performance Remedy Plan as Part of SBCI's Alternative Regulation Plan:* offer the Commission-ordered remedy plan to CLECs as part of its Alternative Regulation Plan, until the conclusion of the next proceeding (which is to commence thirty-six months from the date of this order) that is to determine the need for and appropriate duration of remedy plans in Illinois.

3. *Opt-In Procedure:* limit CLECs ability to opt-in to only two performance remedy plans – the remedy plan approved in this docket to prevent backsliding, and that is approved for use pursuant to SBCI's Alternative Regulation Plan. *In the alternative*, if the Commission does not agree with Staff's recommendation in the preceding section, then it should require SBCI to apply the opt-in to the plans that are in existence at the commencement of this proceeding -- which are the remedy plan approved in Docket 01-0120, the 11-State remedy plan, the 13-state remedy plan, the original merger remedy plan (Texas Plan), or the Covad remedy plan. CLECs preferring to continue with their current remedy plans, such as the remedy plan developed in Docket 01-0120, are allowed to continue with those existing remedy plans (ICC Staff Ex. 29.0 ¶244). Finally, SBCI shall notify all carriers who do not have a performance remedy plan in their interconnection agreement that it has the option of opting in to the remedy plans as approved above.

The opt-in procedure to be offered CLECs is as a modified version of the opt-in procedure approved in Docket 01-0120 (§5.5), and is as follows:

Any CLEC, wishing to incorporate, substitute or add a 271 approved Performance Remedy Plan, or a performance remedy plan offered under SBCI's Alternative Regulation Plan, to its existing interconnection agreement, or a new interconnection agreement, must notify SBC Illinois and the Commission, in writing, of its intent to "opt-in" to a remedy plan. The CLECs "opt-in" becomes effective 20 days from the date of filing said written notice with the Commission, and it supersedes the Performance Remedy Plan previously in effect for that CLEC, if any. Payments shall be calculated in accordance with the Plan beginning with the first full calendar month following the effective date of the "opt-in." An opt-in shall be followed with an Amendment to the Interconnection Agreement filed with the Commission.



Any CLEC that adopts a remedy plan by purchasing out of a tariff, must notify SBC Illinois and the Commission, in writing, of its intent to adopt a tariffed remedy plan.

Any notice required above shall be sent to SBC Illinois' regulatory offices and the Chief Clerk's Office of the Illinois Commerce Commission.

4. *Six month collaborative:* continue meeting with CLECs and Staff, as set forth in §6.3 of the Commission-ordered remedy plan. Therefore, the six-month collaborative would be held [six months after the conclusion of the previous six month process](#), and should continue for as long as wholesale PMs are in existence and are being reported.

5. *Tier 2 administration:* provide only one Tier 2 calculation methodology and assessment amount table to all carriers and remedy plans.

6. *Annual audits:* conduct annual audits as approved by the Commission in Docket 01-0120, Attachment A §6.4.1, and apply it to all remedy plans, and all CLECs.

7. *Mini-audits:* provide mini-audits to all CLECs, and for all remedy plans as provided in section 6.4.2 of the Commission-ordered remedy plan.

8. *Determination of Annual Threshold:* that the amount of the Annual Threshold (i.e. annual cap, in the Commission-ordered remedy plan) be determined through a Commission proceeding that would allow the Commission to evaluate the information provided by SBCI and determine the 36% annual threshold.

The above conditions need to be complied with for SBCI to receive a positive recommendation from the Commission on its 271 application to the FCC.

The Commission finds that the remedy plan approved in Docket 01-0120 ("Commission-ordered remedy plan") is the best plan to prevent backsliding in Illinois since it is currently in use, it provides for audit procedures that will allow the Commission to stay informed on SBCI's wholesale operations, it places a dollar amount at risk that is below the 36% of net return commonly approved by the FCC, yet it is firm, and fair. The Commission-ordered plan also recognizes and compensates CLECs based on individual failures, and it is easy to calculate remedies and it is transparent.

The Commission finds that the SBCI plan, although placing at risk more money than plans previously approved by the FCC, does not offer us the re-assurance that it will adequately prevent future backsliding, as well as the Commission-ordered remedy plan. We are particularly concerned that that the plan is untested, that not all of the assumptions and steps are explained, and that SBCI erroneously calculated remedy payments in its affidavit. Additionally, the plan masks the severity of individual PM failures through the index value, and discards the performance weighting of PMs so there is no recognition of the importance of certain services to industry. The plan is not transparent, so Staff and CLECs cannot do quick double-checks of the payments, thus forcing CLECs to rely on the limited number of mini-audits. It includes a ceiling and floor concept which is discriminatory.

*If the Commission chooses Staff's Hybrid Plan, Staff proposes the following*

*language*. The Commission finds Staff's Hybrid remedy plan as the best plan to prevent backsliding in Illinois since it based on a plan that is currently in use, and makes only minor changes to the pay structure and adds two concepts from the SBCI plan. The additions to the Hybrid plan make reduce the rapid step-down currently in effect in the Commission-ordered remedy plan and it offers the gap closure concept which allows the CLEC and SBCI work to resolve service problems when they arise. The Hybrid plan also provides for audit procedures that will allow the Commission to stay informed on SBCI's wholesale operations, and it places a dollar amount at risk that is below the 36% of net return commonly approved by the FCC, and less than what the Commission-ordered remedy plan provides, yet it is firm, and fair. The Hybrid plan also recognizes and compensates CLECs based on individual failures, and it is easy for Staff and CLECs to calculate remedies.

## **XX. Disputes Driven by State Law**

### **A. Dispute 2 - "All Equipment List" or AEL**

#### **1. Staff Position**

In paragraph 1760 of the Phase I Interim Order the Commission required SBCI to update its "All Equipment List" in compliance with the Order in Docket 99-0615. The Commission also determined that

[t]o bring the Company into compliance with our Order, we can and do require AI to post and update as needed, a list that includes all equipment that meets its safety standards in Illinois.

Phase I Interim Order, ¶1776

Additionally, the Commission noted that nothing in the 99-0615 Order precludes the Company from posting more than just Illinois specific information in the AEL. In doing so, however, SBCI must, in some fashion, mark off, code or otherwise note the items in such a way as to give effect to our Order. And it must update the information, as our Order requires. *Id.* ¶1778. Also, it is required to update the list either on a quarterly basis or immediately upon the addition of new equipment that can be collocated.

On February 28, 2003, SBC Illinois took a number of steps to ensure compliance by posting a list that includes all equipment that meets the Company's safety standards in Illinois.<sup>162</sup> First, the new list posted by SBC Illinois is now labeled the Illinois Safety Compliant Equipment List (ISCEL). Second, SBC Illinois now affirms that the "modified list is limited to equipment that is installed in its Illinois central offices, as required by the Phase I Interim Order."<sup>163</sup> SBC Illinois also asserts that the new ISCEL "includes CLEC-owned collocation equipment, both in Illinois and in the rest of SBC's 13-state

---

<sup>162</sup> Schedule 47.03, SBC's Illinois Safety Compliant Equipment List of February 28, 2003.

<sup>163</sup> Phase 1 Compliance Rebuttal Affidavit of Scott J. Alexander on behalf of SBC Illinois, para. 19.

region.”<sup>164</sup> SBC Illinois explains that “the databases that contain information about CLEC collocated equipment do not permit SBC Illinois to separately identify Illinois-specific CLEC-collocated equipment from the equipment collocated only in other states.”<sup>165</sup> However, SBC Illinois asserted “for collocation purposes, it deems all of the listed CLEC equipment as safety compliant for Illinois.”<sup>166</sup> Finally, SBC Illinois stated “this 13-state approach, with regards to the CLEC-equipment, serves to protect any CLECs that consider their equipment deployment decisions on a state-specific basis to be proprietary.”<sup>167</sup>

Based on steps taken by SBC Illinois to create the Illinois Safety Compliant Equipment List (ISCEL), an all safety-compliant equipment list, in accordance with the recently clarified requirements to post on its website a safety-compliant equipment, it is Staff’s position that SBC Illinois has complied with the Phase 1 Order. This new list should allow CLECs to discern the types of safety-compliant equipment they can collocate in SBCI’s premises. SBCI must, however, continue to update the list as required in the Commission’s Orders in 99-0615 and in Phase I of this docket.

## **2. Commission Analysis And Conclusion**

In our Phase I Interim Order, we directed SBC Illinois to post on its website a safety-compliant all-equipment list, setting forth with specificity the equipment that CLECs will be permitted to collocate in SBC Illinois facilities. We agree with Staff that based on steps taken by SBC Illinois to create the Illinois Safety Compliant Equipment List (ISCEL) SBC Illinois has complied with the Phase 1 Order. However, as Staff’s recommends, SBCI must continue to update the list as required in the Commission’s Orders in 99-0615 and in Phase I of this docket.

## **XXI. Performance Measure Six-Month Collaborative Disputes**

### Background

On February 27, 2003 WorldCom, AT&T and SBC Illinois submitted a letter by which it agreed to resolve two disputed performance measurement issues resulting from the most recent six-month collaborative in this proceeding. The two items in dispute are whether or not remedies should apply to performance measures MI 12, average time to clear services order and MI 13.1, average delay days for mechanized line loss notifications.

### Staff’s Position

---

<sup>164</sup> Id.

<sup>165</sup> Id.

<sup>166</sup> Id.

<sup>167</sup> Id.

Mr. Ehr states in his reply affidavit that the Michigan Public Service Commission (MPSC) has already ruled on these disputes and established remedies for MI 13.1 and did not establish remedies for MI 12. Ehr Reply Affidavit ¶243. He further states that it is the position of the company that the performance measures if remedied would be duplicative to other measures already in existence (MI 13 and 17 respectively) and that the parties in the six-month review have agreed not to apply double remedies. Id.

The Staff generally agrees with SBC Illinois' position that the parties in the six-month collaborative have agreed not to apply multiple remedies to the same OSS processes. However, the specific question that needs to be determined is whether or not having remedies applied to the two performance measures in dispute would constitute double remedies on the same OSS processes.

The Staff states that if remedies were applied to performance measure MI 13.1 that the payments would be duplicative to those associated with performance measure MI 13. Both MI 13 and MI 13.1 report on aspects of SBC Illinois' timeliness in returning line loss notifications. If a line loss notice is late it will be counted as a miss in both of these performance measures. Therefore, in response to WorldCom's request to remedy performance measure MI 13.1, the Staff can only support the request if all parties agreed to remove remedies from MI 13. Alternatively, if WorldCom or any other CLEC would like to negotiate individually with SBC Illinois to have remedies applied to its own company performance for MI 13.1 instead of MI 13, the Staff could also support this alternative.

Mr. Ehr in his reply affidavit states that performance measure MI 12 is a sub-process of the billing completion process measured in PM 17 and therefore remedies on MI 12 would be duplicative to those already being applied to performance measure 17. Ehr Reply Affidavit, ¶245. Before the Staff can offer an opinion on this disputed issue, SBC Illinois must answer the following question: the business rule definition for performance measure 17 states that it measures the "percent of on time service orders that post to billing within a designated interval". The Staff need clarification as to whether this means that only those service orders that are "on time" are included in measurement 17. If it does, then having remedies applied to MI 12 would not be duplicative of all records evaluated in measurement 17. However, if it does not, and SBC Illinois includes all service orders posted to billing within the reporting timeframe, regardless of whether the service orders were on time or not, then Staff would agree that remedies applied to performance measure MI 12 would be duplicative. Staff seeks clarification from SBC Illinois on this point in its surrebuttal filing scheduled for March 17.

In summary, the Staff recommends that the request to have remedies assigned to MI 13.1 be denied unless all collaborative parties agree to remove remedies from MI 13. With respect to MI 12, the Staff's position on this issue depends upon SBC Illinois clarifying whether or not the billing completeness performance measure, PM 17, includes all service orders or only those that are considered to be "on time". If all service orders are included then the Staff recommends the request to have remedies assigned to MI 12 be denied. If all service orders are not included in the billing completeness measure then the request deserves further consideration. All responses to these recommendations should be made in the surrebuttal round.

## **XXII. Commission Findings and Ordering Paragraphs on the Phase II Investigation**